

FINDING INTO DEATH WITH INQUEST

*Form 37 Rule 60(1)
Section 67 of the Coroners Act 2008*

(Amended pursuant to s76 of the Coroners Act 2008 on the 3rd April, 2012)*

Inquest into the Death of SHANE BENNETT

Delivered On: 23 March 2012

Delivered At: Coroners Court of Victoria
Level 11, 222 Exhibition Street
Melbourne 3000

Hearing Dates: 1 to 4 August 2011
8 to 10 August 2011
15 to 19 August 2011
22 August 2011
23 August 2011
31 August 2011
19 September 2011

Findings of: PETER WHITE, CORONER

Representation: Mr P Lawrie, Counsel for Chief Commissioner of Police
Mr A Lewis, Clerk Foley for VicRoads
Mr R Gipp, representing Pursuit Members
Ms F Badali, Gadens Lawyers, representing ESTA
Mr R Taylor, DLA Piper, representing Motorola Solutions
Mr S Russell, representing Trimble Navigation Australia
Mr P Rozens and Mr Southey on the instructions of Gadens,
Lawyers, Counsel for Emergency Services Telecommunications
Authority (ESTA),
Mr Cashen on the instructions of Kelly Hazell Quill, Lawyers
Counsel for the Herald and Weekly Times,

Counsel Assisting the Coroner: Mr T Burns of Counsel,
on the instructions of Meridian Lawyers, (Mr T Katz)

* Amendment comprises updated data in Attachment B. Paragraph 1 refers

I, PETER WHITE, Coroner having investigated the death of SHANE BENNETT

AND having held an inquest in relation to this death on 1 to 4 August, 2011, 8 to 10 August, 2011, 15 to 19 August, 2011, 22 and 23 August, 2011, 31 August, 2011 and 19 September, 2011

at Melbourne, sitting 16 days

find that the identity of the deceased was SHANE BENNETT

born on 2 May 1988

and the death occurred on 17 March 2008

at The Alfred Hospital, Commercial Road, Melbourne 3004

from:

- 1a. CLOSED BRAIN INJURIES
- 1b. MOTOR VEHICLE ACCIDENT

in the following circumstances:

Background

1. Shane Bennett,¹ born on the 2nd of May 1988, was brought up in a closely-knit and loving family in New Zealand. He was the third of eight children. His siblings include Arron, Jason, Jamie, Chelsea, Nicole, Phoenix and Ethan. Shane had come to Melbourne to live in September of 2007 and initially resided in the Frankston area with his elder brother, Arron (Bennett),² who had arrived some four years earlier.
2. At the time Shane had, *'started to get into a bit of trouble in New Zealand mostly for driving stuff like driving on the wrong, license Mum was worried about Shane, as she didn't want him to go to jail. Between the three of us, we decided that he would move here with me to start again. We wanted him to get out of the environment that he was in and he needed a change of lifestyle. Australia would be much better for him and me being his elder brother would be able to keep him in line far better than mum could.'*³
3. Just after midnight on Sunday, 16 March 2008, Shane was involved in a motor vehicle accident with another vehicle at the intersection of Frankston-Dandenong Road and Seaford Road, Seaford. Shortly before the collision, Shane had been pursued by two police vehicles, who had attempted to intercept him as he had been observed committing traffic offences.
4. Mrs Dianne McCready, the other driver involved in the collision, suffered extensive and life threatening injuries from which she has made a partial recovery.
5. Shane suffered critical injuries and was admitted to The Alfred Hospital at 1.38am on 16 March 2008. Despite medical attention, he died in the afternoon of Monday, the 17th of March 2008. Shane was 19 years of age at the time of his death.

¹ Referred to as Shane in this finding.

² Referred to as Arron in this finding.

³ See statement of Arron Bennett Exhibit 1 page 1. See also Exhibit 27B, Shane's NZ conviction history. (Shane had no criminal record in Australia). As to Shane Bennett's state of mind when applying for his Victorian license, see transcript at page 28.

INVESTIGATIONS

Purpose of the coronial investigation

6. The primary purpose of the coronial investigation of a *reportable death*⁴ is to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.⁵ The practice is to refer to the *medical* cause of death incorporating where appropriate the *mode or mechanism* of death, and to limit investigation to circumstances sufficiently proximate and causally relevant to the death.

7. Coroners are also empowered to report to the Attorney-General on a death they have investigated; and to comment on any matter connected with the death, including matters relating to public health and safety or the administration of justice; and empowered to make recommendations to any Minister, public statutory or entity on any matter connected with the death, including recommendations relating to public health and safety or the administration of justice.⁶

8. The focus of a coronial investigation is to determine what happened. By ascertaining the circumstances of a death, a coroner can identify opportunities to help reduce the likelihood of similar occurrences in future.

The Evidence

9. This finding is based on the totality of the material as the product of the coronial investigation of Shane's death, that is, the brief compiled by Inspector Michael Talbot (the Investigating Member), the statements and testimony of those witnesses who testified at inquest and any documents tendered through them and the submissions of Counsel. All this material, together with the inquest transcript, will remain on the coronial file. I do not purport to summarise all the material/evidence in this finding, but will refer to it only in such detail as is warranted in the interests of narrative clarity.

Medical investigations

10. Dr Paul Bedford, Pathologist, Victorian Institute of Forensic Medicine, conducted an autopsy and determined the cause of death as 1 (a) Closed Brain Injuries and 1(b) Motor Vehicle Accident.

11. A Toxicological Report following an analysis of Shane's blood, taken on the 19th of March 2008 indicated the presence of Δ^9 -tetrahydrocannabinol (6ng/mL), which is also referred to as THC.⁷ Dr Morris Odell, Forensic Physician, stated that levels of THC above about 4-5 ng/mL are evidence of consumption of cannabis within the preceding two or three hours. He further stated that:

- a. Shane was driving after having used cannabis at an indeterminate time prior to the collision;
- b. Shane had a low blood THC concentration by the time the blood sample was taken, about 110 minutes after the collision;

⁴ Section 4 of the *Coroners Act 2008* requires certain deaths to be reported to the coroner for investigation. Apart from a jurisdiction nexus with the State of Victoria, the definition of a reportable death includes all deaths that appear "to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from accident or injury."

⁵ Section 67 of the *Coroners Act 2008*.

⁶ Sections 72(1), 72(2) and 67(3) of the *Coroners Act 2008* regarding reports, recommendations and comments respectively.

⁷ THC is a metabolite of cannabis.

- c. Shane's THC level may have been higher at the time of the collision but it is not possible to calculate or estimate what it might have been; and
- d. Shane's driving skills may have been adversely affected by the effects of cannabis at the time of the collision.

Shane's history in the months before his death

12. On the 23rd of November 2008, Shane was able to use his New Zealand drivers' licence to obtain a Victorian licence. At the time of making his application, he knew that his New Zealand licence had been disqualified, but he did not disclose that matter to Victorian authorities.⁸

13. Arron testified that his brother was optimistic about his future at the time of his death. Shane had obtained a job as a welder in a truck body business, within two days of his arrival in Australia, '*which he loved He was getting his life together and settling down well*'.⁹

14. About two to three months after his arrival, Shane left the home he had previously shared with Arron and Arron's fiancé, after some difficulties arose when a friend had arrived from NZ seeking accommodation. Thereafter he moved into a new accommodation in nearby Seaford from where he remained in close contact with his brother.

15. Under further examination, Arron testified that his brother was known to have a history of regular cannabis use¹⁰ and that his general feeling towards police, whether under the influence of cannabis or not, was one of general antagonism.¹¹

The 14th, 15th and 16th of March, 2008

16. On Friday the 14th of March, two days before his death, Shane purchased an unregistered second-hand red Mazda 323 motor vehicle.¹² The vehicle in question was lawfully sold without number plates.

17. Shane was excited about the purchase of his first car in Australia and late on Saturday the 15th March he brought it around to show his brother, Arron. There were no number plates on it at this time and Arron advised his brother to get it registered as soon as possible. Shane told Arron that he would get it registered on the following Monday.

18. At approximately 6.30 pm on the 15th March, Shane and his housemates, Karan Sterling and Dave Hook left Arron's home, with Shane observed to be in high spirits. According to Arron, his brother appeared to be sober and his understanding was that Shane, and his friends were going home.

⁸ Arron Bennett had learnt from his mother that his brother's license was disqualified, before he left NZ. See also Exhibit 27(C), Shane's Vic Roads license extract and the evidence of Mr Cattapan, the registration and licensing manager at Vic Roads and the discussion of current policy approaches at Exhibit 24, and from the transcript at page 810. Concerning current licensing arrangements in Victoria see also the discussion at Comment 3 and Recommendation 5 below.

⁹ See Exhibit 1 page 1. He held down this position continuously until his death.

¹⁰ See transcript at page 26-27.

¹¹ See transcript at page 26.

¹² At the time of the fatal collision in the early hours of Sunday the 16th of March, false cardboard number plates, RUX 292, were displayed at the front and rear of the vehicle. See Exhibit 27(A) and the evidence of Sergeant Whitehead.

19. Thereafter, according to information later received by Arron, the group returned to their Seaford home and later Shane drove to the home of a mutual friend, Mana Sherman, who also lived in Seaford.¹³

20. Despite efforts to locate the persons referred to, I have been unable to verify what Shane's movements were until shortly before midnight that night (Saturday the 15th of March), when his vehicle first came to the attention of police in Frankston.

21. It is relevant to note that the toxicological examination undertaken in this case (as noted above), taken together with the observations of his brother that Shane didn't appear to be under the influence of illicit substances during his visit in the late afternoon, tends to establish that he consumed cannabis, the traces of which were found during examination, at sometime later that evening.

THE FOCUS OF THE INQUEST

22. The primary focus of the coronial investigation of Shane's death,¹⁴ including the inquest, as reflected by the witnesses required to attend the inquest to testify, was on the immediate events leading up to the collision leading to Shane's death including the conduct of the police pursuit, in particular, the accuracy of Global Positioning System (GPS) satellite tracking technology and the response of Frankston 615 to the Pursuit Controller's direction to abandon the pursuit.

23. Two police vehicles were involved in the police pursuit immediately preceding the accident. The vehicle referred to as 'Frankston 251' contained Constable Warwick Morgan (holder of a Silver Class Victoria Police Driver Certificate) as the driver and Andrew Whitehead, Sergeant of Police (also the holder of a Silver Class Victoria Police Driver Certificate) as the passenger. This vehicle eventually took up the position of the secondary vehicle in the police pursuit. The primary vehicle referred to as 'Frankston 615' contained Senior Constable, Cameron Orr (holder of a Silver Class Victoria Police Driver Certificate) as the driver and Leading Senior Constable Michael Bednarczyk (holder of a Gold Class Victoria Police Driver Certificate and Solo classification driver's authority) as the passenger.

24. The Pursuit Controller was Sergeant Kurt Krause, referred to as 'Hastings 251'.

25. The evidence suggests that Shane first came to the attention of police at approximately 11.58 pm on Saturday, 15th March 2008. At this time, his red Mazda was observed in Playne Street at its intersection with the Nepean Highway, by Sergeant Whitehead and Constable Morgan (Frankston 251), who formed a reasonable suspicion that the driver had committed an offence.¹⁵

26. Efforts were made by Frankston 251 to have the driver of the Mazda pull over for enquiry. These attempts did not succeed as Shane appeared determined to evade police and, as a result, a pursuit of the red Mazda by Frankston 251 commenced.

27. It is relevant to note that initial information concerning this pursuit, particularly the speed and passage of the police vehicles, Frankston 251 and Frankston 615, relied heavily upon the statements of

¹³ See the (hearsay) evidence of Arron Bennett at exhibit 1, page 2.

¹⁴ At the completion of the police investigation and prior to the commencement of the inquest, it was apparent that a number of the facts about Shane's death are known and were uncontroversial. These include the deceased's identity, the medical cause of his death and aspects of the circumstances, including the place and date of his death.

¹⁵ See the D24 transcript, Exhibit 19B, where Sergeant Whitehead refers to offences of 'unregistered/fail to stop.' See also Exhibit 20.

the participating police officers, and to a lesser extent on the somewhat more fleeting observations of other (civilian) eyewitnesses. During the course of its investigation, however, the Victorian Police Traffic Management Unit obtained evidence which suggested that the statements received to that point, about the speeds and the passage of Frankston 251 and Frankston 615 in particular, may not have been accurate.¹⁶

28. Thereafter, the Investigating Member [after extensive consultation with Detective Sergeant Torcasio who had monitored the earlier investigation on behalf of the Ethical Standards Department (ESD), Victoria Police] spoke again with the pursuing officers, with each officer broadly confirming his earlier version of events.

29. Following these developments the Court, through the Investigating Member made attempts to obtain further information concerning the workings and use of GPS satellite tracking technology, with a view to obtaining a better understanding of the accounts of eye witnesses, while also seeking to verify the accuracy of police witness statements concerning speed and when and where pursuing police vehicles disengaged, i.e. the passage of the concerned vehicles.

30. Issues that arose regarding the data included the following:

- a. The margin for error in plotting GPS location in two dimensions, i.e. on a map and the sky plot tool (dilution of precision).
- b. The effect on the perimeter of and margin for error.
- c. The margin for error for measuring instantaneous velocity including the manner in which it is calculated.
- d. The integrity of the data transfer between the Motorola Data Terminal and the Motorola databank and the time delay if any and the UTC and GMT time and the effect, if any, this might have on the integrity of the data received.

31. I note that, with the co-operation of all interested parties, the inquest produced a full raft of evidence concerning the use of GPS technology and its level of accuracy (this evidence coming from sources both within Australia and from the United States), which eventually led to admissions as to the accuracy of the technology being made by the four concerned members.

32. I include a summary of this evidence as Attachment A of this finding.¹⁷

The issue of certificates under section 57 of the *Coroners Act 2008*

33. All four police officers, the occupants of Frankston 231 and Frankston 615, made applications under section 57 of the *Coroners Act 2008* for certificates of immunity, which applications were granted, without objection.¹⁸

¹⁶ Both the vehicles in question, Frankston 251 and Frankston 615, carried GPS satellite tracking derived from the Mobile Data Terminals, (MDT). See the animated CD and diagrams prepared for the Investigating Member by Mr Clive Oberin, the manager of Mobile Data Network (MDN), Victoria Police, which disclosed information which (if true), contradicted in material aspects, the earlier versions offered by the officers concerned. See Mr Oberin's statement, Exhibit 22 at page 5.

¹⁷ This material draws from notes compiled by Instructing solicitor Mr T Katz in consultation with Counsel Assisting the Coroner, Mr A Burns.

¹⁸ See transcript at page 964 -65 re S/C Orr; transcript at page 1178 re LS/C Bednarczyk; transcript at page 451 re Sergeant Whitehead and at transcript at page 1372 re Const Morgan. From this order it follows that the evidence given by each officer cannot be used to prove any other offence, civil or criminal, other than in regard to the falsity of that evidence. See Section 57(7) of the *Coroners Act 2008*.

THE EVIDENCE OF THE OCCUPANTS OF FRANKSTON 615

1) Evidence given by S/Const Orr

a) Daybook note 16/3/08

34. In his daybook S/C Orr's note was as follows,

*'At the traffic lights I heard Hastings 251 terminate and heard an audible tone, turned off the overhead lights and siren (and nudge bar lights) and slowed to pull over. As I slowed I saw the defendant undertake a vehicle outside the Seaford Hotel and continue through a red light at (the intersection), where he collided with a vehicle. I then continued up to the scene and observed the collision.'*¹⁹

b) Running sheet MDT entry made in vehicle outside station early am, 16/3/08

35. S/C Orr further testified about his later writing up of his Mobile Data Terminal (MDT) computer running sheet of the incident.²⁰

36. And about the attendance at the accident scene of the pursuit controller, Sergeant Krauss, and his senior, a senior sergeant from Pakenham, together with fire and ambulance officers and representatives of the Major Collision Investigation Unit and the Ethical Standards Department.

37. I note that in his MDT running sheet (written up in the presence of L/S/C Bednarczyk), on his vehicle computer terminal, outside Frankston station, following his return he stated that,

'Pursuit abandoned on Seaford road approx opp. Pulled over and observed vehicle drive through red tcs into another vehicle. Continued to scene.'

c) Police statement 17/3/08²¹

38. In S/C Orr's police statement made at 1.30pm on the 17th of March 2008, he stated that prior to the pursuit he had been the front passenger in Frankston 615, driven by his senior, L/S/C Bednarczyk. Later, he came to drive the vehicle back to the station where they heard about the pursuit, which was close to their current location.

39. L/S/C Bednarczyk²² directed him to drive to the location to assist. As they approached Seaford Road, with blue and red flashing lights activated, they saw the red Mazda turn left into Seaford Road from Station Street, followed by Frankston 251.

*'and swing wide across the road onto the wrong side of the road.'*²³

¹⁹ See transcript at pages 975-976, as read from his daybook note Exhibit 31A. See further examination on this entry by Counsel assisting the Coroner discussed below. See also the internal switching panel controlling lights and siren within photographs at Exhibit 31B.

²⁰ See the TMU Mobile Duty Return Tasking Sheet prepared by LS/C Orr at exhibit 31D.

²¹ See Exhibit 31.

²² L/SC Bednarczyk was described by S/C Orr, as a gazetted member of the Frankston TMU and the holder of a gold class classification. He further testified that it was his passenger's duty to operate the vehicles' radio. See transcript at page 988.

²³ See Exhibit 31 page 2.

40. L/S/C Bednarczyk advised the pursuit controller that they were in position as a secondary unit and the controller then requested that they become the primary vehicle in pursuit.

41. Thereafter, they overtook Frankston 251, becoming the primary pursuit vehicle while two other vehicles pulled over to their left to allow Frankston 615 to pass. They then travelled to 'within approximately 25 metres' (of the red Mazda), which was travelling at the speed of 120 to 130 kmph.

42. They travelled 500-700 metres as the primary vehicle along Seaford Road before hearing the controller terminate the pursuit, following which he, '*turned off the flashing lights and siren and slowed down pulling over to the left still watching the red hatch,*²⁴ estimating that he pulled over at around Sussex Crescent, '*which is still 350 to 400 metres' from the intersection.*'

43. Later, S/C Orr stated that he witnessed the collision after the red Mazda continued through a red light.

*'I saw the red hatch travel a distance in the air and a ball of flame emit from it. I then accelerated the police vehicle to the scene and parked on the north side of the centre of the intersection.'*²⁵

d) Court room testimony from 16/08/2011

44. Under questioning from his Counsel, Mr R Gipp, S/C Orr first testified about his service and about being three months into a 12-month secondment to the Frankston TMU, at the time under consideration and that he had been the driver in a police pursuit, on two previous occasions.²⁶

45. He was then called upon to read out his daybook entry made at 4.30am on the 16th of March, which he made at the scene and about the later 'hot debrief,' which occurred at Frankston station.

46. S/C Orr gave evidence about conversations with L/SC Bednarczyk concerning the question of whether he had stopped or not. He stated that he now had no recollection of discussing this matter with L/S/C Bednarczyk earlier, but did discuss it with him during inquest preparation when informed by his legal advisers that it was likely to be a matter of interest to the Court.

47. In answer to Mr Gipp, S/C Orr also testified that he now had no recall as to whether he had come to a complete halt or not.²⁷

48. His further testimony was that before setting off from his stationary position outside the Frankston Police Station, he did not swap seats with L/S/C Bednarczyk who had told him to proceed, because of the urgency of the situation and because L/S/C Bednarczyk was his senior officer and a gold class holder, while he was on temporary duty only.²⁸ Following his departure, he maintained that he kept an eye on the speedometer (on the Nepean Highway), viewing it on at least three occasions while maintaining his speed within his 150kmph speed limit.²⁹

²⁴ Exhibit 31 page 3.

²⁵ Ibid page 3.

²⁶ Transcript page 973.

²⁷ See transcript at page 977.

²⁸ See transcript page 996-997.

²⁹ See transcript page 998.

49. Mr Gipp then further questioned S/C Orr with reference to the plotting of speed, concerning his driving on the Nepean Highway between 12.01.27 and 12.01.54, which suggested that he drove at 163 kmph at 12.01.27 and 161 kmph at 12.01.30.³⁰ His evidence was that he disagreed with these speeds but agreed that it was possible that he might have hit same when he was not looking at his speedometer.

50. Mr Gipp questioned S/C Orr about his speeds on Seaford Road. S/C Orr's evidence was that he had heard Frankston 251 communicate to the pursuit controller the speed of 100 kmph at 00.1.44.³¹

51. His further evidence was that he carried out a risk assessment and considered the speed limit of 60 kmph along the whole of Seaford Road; the fact that the offender had run two red lights; the fact that the other vehicular traffic was light and the offender's apparently (good) level of control over the vehicle in question as well as the favourable weather conditions that evening.³²

52. S/C Orr testified with respect to his suspicion that the driver had committed a more serious offence, which was the foundation for his wanting to get away.³³

53. Mr Gipp then asked S/C Orr about his speed at the point of overtaking Frankston 215 (*'I can't recall.'*) and about his speed at 12.02.42, the plotting point before Brunel Drive with GPS instantaneous speed of 148 kmph, (*'it's certainly a possible speed.'*)

54. Mr Gipp: *'But you don't recall looking at your speedo at that particular time?'*

*'I don't recall that, no.'*³⁴

55. It was common ground that thereafter (from the plotting point for 12.02.45), Seaford Road becomes a long straight road up to and including its intersection with the Frankston-Dandenong Road, and beyond.³⁵

56. At approximately this point, S/C Orr estimated that the Mazda was 150-200 metres in front. His stated intention was,

'to take up a position behind and keep an equal distance and measure speed'.

Did you do that?

I closed the gap (to) around 20 to 25 metres.

When you reached that point ... (where were you)?

It was definitely after Wicklow and possibly just prior to Elisdon ...,

57. And in regard to his then speed,

*'I didn't look at my speedo. No I can't recall.'*³⁶

³⁰ See Exhibits 16A and 22B and discussion from transcript page 998-999.

³¹ See transcript at page 1005.

³² See transcript 1005-1009.

³³ See transcript page 1010 and the discussion at the footnote to paragraph 215 below.

³⁴ See transcript at page 1020.

³⁵ See exhibit 22B which shows the times plotted from Frankston 615 and the second page of exhibit 16A re the vehicles speed.

³⁶ See transcript page 1021-22. By reference to the GPS plotting for Frankston 615 (exhibit 16A), we know that 615 began to decelerate from his maximum speed of 177kmph, between Wicklow and Elisdon.

58. S/C Orr's further evidence was that his estimate of speed during the catch up phase was, *'up to 150kmph was an approximate'*.

Mr Gipp: *But your evidence is you never saw your speedo?*

'Correct'.

So it's a guess?

'Yes.'

59. And further in regard to the plotting point between Wicklow and Elisdon at 12.02.54,

Mr Gipp: *That indicates an instantaneous speed is 177 kmph.*

Yes.

Q. Do you not having looked at your speedo, do you concede that you may have reached those speeds as part of the catch up process?

....it was certainly possible

*Q When you reached the back of the Mazda, 20 to 25 metres, did you slow your vehicle down?
It was very close to the termination of the pursuit, yes.'*³⁷

60. S/C Orr's further evidence was that he had estimated the Mazda's speed at between 120-130 kpmh, but couldn't say where the Mazda was at this time, though not when he reached a position 20-25 metres behind.

61. S/C Orr further testified that he abandoned the pursuit upon receiving direction from the pursuit controller, this occurring at 00.02.53, (shortly before his maximum speed was reached). From this point he testified that,

'I turned the flashing lights and siren off just gradually slowed,

*I would say within 3-5 seconds approximately after the word abandon has come across that my speed decreased significantly.'*³⁸

*'... I would estimate I was around Elisdon Drive when I heard the call and then within 3 to 5 seconds of that which would put me sort of between Prince and Henry Streets, where I've sort of braked more significantly.'*³⁹

³⁷ Ibid 1022-23.

³⁸ See transcript at page 1025.

³⁹ See transcript at page 1026.

From exhibit 16A speeds, and the 22A, 615's plotting points we can see that 615's maximum speed 177kmph was reached 00.02.54, and that vehicle speed reduced from 169 kmph to 135 kmph between 00.03.00. and 00.03.03, between Prince and Henry, and then to 72 kmph by 00.03.09, when 615 was situated between Sussex and Bellview, and then to 34 kmph, (this some 25 seconds after the controller had ordered abandonment).

62. S/C Orr was further asked if he ever came to a complete stop to which his answer was 'no', which answer I note was different to the 'I don't know' answer he gave earlier in evidence.⁴⁰

Mr Gipp: *Q: 'I'd like to try and pinpoint, where it was that you slowed the vehicle right down, pulled over to the left and as you say you had virtually come to a halt but you hadn't actually stopped?*

Near Sussex Crescent just between Henry and the next street down from Henry.

Q: So is it your evidence that at the time you reached Sussex Crescent you had virtually come to a stop?

*'Yes.'*⁴¹

63. S/C Orr further explained that he then saw the collision at the intersection (this from Sussex), and that he immediately accelerated to get to the collision and render assistance. His further evidence was that it was 10-15 seconds after seeing the collision that he arrived at the collision scene, and that he did not turn back on the blue/red flashing lights and siren during this time.⁴²

64. Thereafter S/C Orr and L/S/C Bednarczyk assisted the parties and notified emergency services.

65. A further record was made concerning the later theft of a flare from the collision scene at around 2.40am, and the fact that two males were taken back to Frankston in connection with this matter and a subsequent incident of, '*hindering police and resisting arrest.*'

66. S/C Orr also testified as to his return to the Frankston Police Station and of his conversation with Senior Sergeant Torcasio, after clearing the collision scene at 3.07am, and of a debrief which took place, at that time.⁴³

67. S/C Orr was also then questioned about a further 'debriefing' which took place at the Frankston Police Station on the 2nd December 2008, and of being shown an animation CD, by Inspector Talbot which incorporated the D24 transcript and plotting maps, discussed in evidence. S/C Orr understood that the purpose of this meeting was to provide members with an opportunity to clear up inconsistencies between their earlier statements and the maps and animation CD. He believed that Exhibits 16B, the CD and 16A, 31E, and 31F, which concerned the plotting of the path and speed of Frankston 615, and Frankston 251, may have been the documents shown to him.

68. He and the other members were shown the animation film and given an opportunity to review the other materials. Of this meeting, S/C Orr stated that,

⁴⁰ See transcript pages 977 and 1027-8.

⁴¹ See transcript page 1027. I note here that Sussex is situated approximately half way between the plotting points for 615 taken at 00.03.03 (speed 135 kmph) and 00.03.09, (speed 72kmph). If correct it follows that during this 6-second period, S/C Orr slowed from 135 kmph to a 'virtual halt' and then witnessed the accident while at Sussex, and then accelerated to 72kmph. He then slowed again until he came to a stationary position (00.03.42), at the intersection, this slowing including a period of 18 seconds, when he reduced his speed from 72kmph (00.03.09), to 29kmph, (00.03.27).

⁴² See transcript at page 1029.

⁴³ See transcript at 1041-4.

'I didn't believe the data I was looking at. I couldn't accept the speeds that were on the information.

.... I made a concerted effort to monitor my speed on the Nepean Highway at 150 prior to engaging at the rear of the pursuit and obviously knowing the upper limitation on my licence I have looked at the digital speedo ...to ensure I wasn't exceeding 150, and then to see 163 as the first plotted speed.. I didn't have an understanding as to why it was showing that I was going faster than 150.'

69. S/C Orr, like the other officers present, did not provide a supplementary statement.⁴⁴

70. Mr Gipp questioned S/C Orr about Frankston 615's failure to notify abandonment of the pursuit. His view was that that task should have fallen to L/S/C Bednarczyk. He also testified that L/S/C Bednarczyk didn't have a sufficient opportunity to undertake this task and that there was only 10-15 seconds between hearing the pursuit abandonment tone, and the occurrence of the collision.

71. S/C Orr further stated that it was the task of Frankston 251 to send in speed reports, after Frankston 615 took over as the primary pursuit vehicle.

72. He was then questioned about the pursuit management prompt sheet (Exhibit 31G), which he had with him at the relevant time, and of his familiarity with the Victorian Police Manual, as it applies to pursuits.

73. S/C Orr stated that his pursuit of Shane was an elective rather than an imperative pursuit. He further testified that he carried out an ongoing risk assessment in accord with the requirements of the manual. And that the risk he was continuously assessing, had to do with risk to life for himself, as well as to the others involved and whether that risk, *'outweighed the result to be achieved.'*⁴⁵

Mr Laurie, Counsel for the Commissioner examination of S/C Orr

74. S/C Orr stated that his reference in Exhibit 31D to 'traf light' might be a reference to either the density of traffic or a traffic light signal. He gave further testimony about the adequacy of his training as the holder of a silver class-driving licence and about the framework, which forms the basis of a pursuit driver's on going risk assessment.

75. S/C Orr also testified as to why a tyre deflation device could not have been employed in this pursuit.

Counsel Assisting the Coroner, Mr Burns

76. In answer to further questions by Counsel assisting the Coroner, Mr Burns, S/C Orr stated that he recognized his duty to tell the truth when making a statement for court proceedings.

77. He also now agreed that the locations shown on Exhibit 31E and the times shown at the GPS plotting points were correct and he also agreed with the speeds attributed to his vehicle, as set out in Exhibit 16A.

⁴⁴ Transcript page 1069-1071.

⁴⁵ See transcript at page 1082-91 on S/C Orr's evidence as to how he conducted his risk assessment.

78. His position was that he did not intend to reach these speeds and was not aware that he had done so.⁴⁶

79. S/C Orr also agreed that when he made his entry in his running sheet, (the mobile duty return), he recorded at 3 minutes and 45 seconds, that he had used the term, '*pulled over*', and that this term meant that he had come to a stop.⁴⁷ He also agreed that this was different to his daybook note, (Exhibit 31A), where he stated, '*slowed to pullover*'.

80. S/C Orr further agreed that in his later statement (Exhibit 31 at page 3), he uses the expression '*slowed down pulling over*', and further that his statement was made at the Frankston Police Station at or about the same time as those made by his three colleagues also engaged in the pursuit.

81. S/C Orr further stated, concerning this matter, that he could not remember if he had shown his statement to his colleagues before signing it, and that he was aware that L/SC Bednarczyk had stated in his own statement that he (S/C Orr), had pulled over. He was also aware that Sgt Whitehead and Cons. Morgan had also stated in their statements that they had seen his vehicle stop.

Mr Burns: Q *'We now know that your vehicle didn't stop?'*

Correct.

Q: *So you all made a mistake, or all four of you say the wrong thing in your statements for some other reason?*

Certainly my statement has been amended to look at the notes that I took on the night'.⁴⁸

82. S/C Orr was then asked about his meeting with the Investigating Member at the Frankston Police Station on the 2nd December at which the GPS technology and the suggested speeds and passage, were first discussed. He stated that he did not recall whether or not Inspector Talbot had asked him if he had stopped or not.⁴⁹

83. He further stated that he did not believe that his statement had conveyed an incorrect impression, and that the focus of Inspector Talbot's December 2nd inquiry was to do with the accuracy of the (new) allegations, concerning speed.

84. In further questioning, S/C Orr agreed that his statement (Exhibit 31, page 3), '*slowed down pulling over to the left*', may have conveyed the impression that he had stopped his vehicle.⁵⁰

85. Mr Burns then suggested that on the 2nd December (at the time of his meeting with Inspector Talbot) that S/C Orr knew that his statement differed from his daybook notes. S/C Orr disagreed, stating that on that day the focus of the conversation was not stopping his vehicle, but the speed at which they travelled.

⁴⁶ See transcript at page 1103.

⁴⁷ See transcript at page 1108-9. This running sheet entry Exhibit 31D, was made back at the police station several hours later.

⁴⁸ See transcript at page 1112.

⁴⁹ Inspector Talbot testified that he had put this matter, and the question of speed directly to S/C Orr and LS/C Bednarczyk.

⁵⁰ He also agreed that Mr Bednarczyk had stated in his own statement that they pulled over.

'... my belief when I made my notes was that I didn't come to a complete stop. That's sort of reflected quite clear in my notes that I took at the time.

Q: Yes accept that your note is accurate about it.

The question is why didn't it make its way into the statement?

I don't know'.

86. S/C Orr was then further asked why he didn't make that matter clear to Inspector Talbot on 2nd December and responded that he didn't recall that, *'as being a significant matter'*.⁵¹

87. S/C Orr was questioned about his checking of his speed while on the Nepean Highway. He agreed that he turned into Seaford Road expecting to see the Mazda and Frankston 251 approaching along Railway Parade on his left and that the Mazda entered Seaford Road by going through a red light at that intersection, in front of him, with Frankston 251 approximately 100 metres behind. He further agreed with the speeds of both vehicles put to him by reference to Exhibit 16A, as he overtook Frankston 251 that Frankston 251 was decreasing speed (12.02.39-41. See also D24 transcript at exhibit 19B).

88. S/C Orr further agreed from Exhibit 19B that Sgt Whitehead had made the overtake call at 00.02.40.

89. S/C Orr was then asked about his distance (at the time) from the Mazda in front and stated an approximate distance of 100 -150 metres and that the Mazda was travelling at 120-130 kmph. And further questioned about the distance travelled at a constant speed of 120kmph, (33.33 metres per second).

90. His further evidence was as earlier that he reached a position (by acceleration), where he was 25 metres behind the Mazda, and that he had reached such a position at the same time as he heard the controller direct the abandonment, (*'Its at and around that time....'*).⁵²

91. S/C Orr further confirmed that he responded immediately and disengaged and didn't wait for the D24 audible abandonment tone to do so. S/C Orr's further evidence was that he reached his lowest speed at the time of the audible tone.⁵³

Mr Burns Q *'What speed were you travelling when you got to your lowest speed on Seaford Road prior to getting to the intersection?*

*....I don't recall, I didn't look at my speedo.'*⁵⁴

92. S/C Orr further testified that he didn't stop and believed his lowest speed may have been 10 to 15 kmph. He further confirmed his earlier evidence that he estimated that the collision occurred 10-15 seconds after the abandonment tone.

'So the point where you were nearly stopped travelling 10-15 kmph, it took you another 10-15 seconds where you still hadn't come to a complete stop? Is that your evidence?

.... it may have been a bit after or a bit before.

⁵¹ See transcript at page 1116.

⁵² See transcript at page 1127

⁵³ See transcript page 1131. See also the D24 transcript at exhibit 19B, together with the (agreed) plotted speeds for 615 set out in exhibit 16A. I note here that this data tends to establish that in fact 615 was travelling at a speed of 72 kmph at 00.03.09, one second after the audible abandonment tone sounded at 00.03.08.

⁵⁴ See transcript at page 1132.

*Q .You'll agree Senior that that sounds absurd doesn't it that you nearly stopped?
It does sound absurd, yes, I would agree with thatThe way it sounds I agree with you'.⁵⁵*

93. S/C Orr further accepted the suggestion that Elisdon Drive, where he commenced to slow, was a distance of 670 metres from the point of collision. It was also accepted (as earlier), that it would take the Mazda travelling at 120kmph from Elisdon Drive, a period of 20 seconds to reach the scene of the collision.

94. It was also accepted that based upon S/C Orr's own estimates concerning the Mazda's position when the abandonment order was made, (and that the accident occurred within 20 seconds of the order), that the collision occurred at 00.03.17.⁵⁶

95. L/S/C Bednarczyk's suggestion that Frankston 615 pulled over near Prince Crescent, (ie. before Elisdon Drive) was then put to S/C Orr by Counsel Assisting, who did not accept this proposition.

96. S/C Orr accepted that Henry Street, to the point of collision was 420 metres, and the distance between Sussex and the same point was 319 metres, (the distance between the two being 100 metres).

97. S/C Orr also accepted that the data showed he was travelling at 72 kmph, at 00.03.09, as per Exhibit 16A.

98. It was further suggested that the collision could not have occurred at 00.03.09 and S/C Orr then accepted that at that time he was closer to Bellview than Sussex and must have been travelling at a speed in excess of 15kmph.

99. S/C Orr was then further questioned about his own position at the point of the accident, earlier accepted as 00.03.17 and agreed that the data showed he was almost at Ti-Tree at this point, (and one second later measured as travelling at 34kmph).⁵⁷

*Mr Burns: 'I suggest to you that that was what actually happening?
It's not my recollection of what occurred'.⁵⁸*

100. He was then asked again where he was at the point of collision.

*A 'Approx Sussex Crescent.
Still slowing down'?
That's my recollection - still slowing to about the point of the abandonment tone at 00.03.08 and still not stopped 10 seconds later.*

101. S/C Orr then agreed with Mr Burns that he may have been at most 200 metres from the point of collision, (between Bellview and Ti-Tree), when it occurred.⁵⁹

102. S/C Orr was then asked questions about his post collision travel to the accident scene. He agreed that the time taken was about 12 seconds.

⁵⁵ See transcript at page 1134.

⁵⁶ See transcript at page 1136.

⁵⁷ See transcript page 1137-38.

⁵⁸ Ibid 1138.

⁵⁹ See transcript 1138.

Q 'So the suggestion (your Counsel) earlier put to eye witnesses that it might have been longer than a minute is just wrong isn't it?

*..Well yes it certainly wasn't a minute.'*⁶⁰

103. S/C Orr then further agreed with Counsel Assisting that he was in fact still moving forward towards the intersection 10-15 seconds before the collision. He also further agreed that this might have been in the vicinity of Bellview Cres as previously suggested. He further conceded that it didn't make sense to be travelling for 10 seconds, before the collision, at a speed of only 10-15 kmph.

Q 'The reality is Senior is that you didn't stop at around the abandonment tone, that you kept going albeit at a much slower pace towards this vehicle?

..I don't accept that particular statement.

Q Well you certainly weren't creeping along at 10 to 15 kmph were you?

*No'.*⁶¹

104. S/C Orr was further questioned about his risk analysis and '*whether the pursuit endangered the public or the police*', as set out in the VPM, (at Brief 196-97). He stated that he probably would have called the pursuit off before the intersection, having regard to the '*probability of having people there.*'

105. He was asked about his speeds of 160 -177 kmph being at the 'high end' and agreed that he had never driven a police vehicle at such a speed before. He was additionally asked, over objection, about applicable 'hoon legislation' and agreed that members of the public may have their vehicle impounded for driving in excess of 45 kmph above the speed limit.⁶²

106. He was challenged by Counsel Assisting, in regard to his evidence that he remained unaware of his speed as he drove on Seaford Road. He agreed that there was both an analogue and digital speedo situated in front of him, together with a Motorola screen, and a moving mode radar screen above the Motorola screen, in a central position on the dash.

107. His further evidence was that he had never previously used the radar screen and did not remember if the radar screen was in the vehicle, or whether it was being operated at the time in question.⁶³

108. S/C Orr stated that on Seaford Road as the primary pursuit vehicle, he wasn't (able to) pay attention to the two speedometers that he did have access to. And that the pursuit was always an elective pursuit rather than an imperative pursuit with his mind never turning to the latter as a possibility.

109. Under further examination by Counsel Assisting, S/C Orr stated that he was well familiar with the intersection and that at midnight it was reasonable to expect that traffic would be coming and going from the Seaford Hotel. He was aware that there was also a late serving McDonalds store and petrol station at the intersection and that he now knew that there was a late night pizza store, nearby.

⁶⁰ See transcript at page 1139.

⁶¹ See transcript at page 1140.

⁶² See transcript and ruling on objection at transcript page 1143-44

⁶³ See front photograph at exhibit 31B. See discussion with Counsel and concession that it was in the vehicle, and suggestion by L/S/C Bednarczyk that it may not have been switched on at the relevant time, at transcript page 1146.

110. S/C Orr was also aware that by this point Shane had run two red lights and he agreed that at midnight the intersection could be busy.

111. In response to a suggestion that, in these circumstances and given the Mazda's speed that he should have on his own initiative chosen to abandon, he stated that it was a decision that he could have made, but that having regard to the road the weather, the lighting and his manner of driving, he didn't perceive, '*a serious danger.*'

112. S/C Orr, agreed however that the situation was in fact more dangerous than he had realized, and that in such circumstances he should have called the pursuit off earlier.⁶⁴

113. In answer to further questions from the Court, S/C Orr stated that he had not become aware of L/S/C Bedarczyk's daily report that he had stopped the vehicle until just before the inquest. He was further asked about whether an inference should be drawn from the difference between his daybook note and the subsequent statements of the four attending officers, on the issue of whether Frankston 615 abandoned the pursuit, in accord with the controllers instruction. In response, he stated that in formulating his statement, he had no intention to mislead. S/C Orr stated that he was aware of the manner in which evidence would be collected as part of a coronial investigation and that he was aware that the management of police pursuits was a matter of public importance.

114. In response to a further question designed to establish whether the S/C Orr believed the manner of driving of Frankston 615 had contributed to the accident, he disagreed stating that they had abandoned the pursuit, (and) '*there would have been ample time for Mr Bennett to see that that had occurred and for him to make a decision to slow down and then possibly obey the traffic control or turn left as per the traffic light green arrow.*'⁶⁵

Evidence given by LS/C Bedarczyk

a) Daybook note 16/3/08

115. In his hand written notes dated 16/3/08, LS/C Bedarczyk stated,
*'Maintained an even distance behind offending vehicle along Seaford Road, Speed approx 120-130 kmph. 60kmph zone. Pursuit terminated audible tone sounded.
Emergency lights and sirens turned off + pulled over.... word unclear, Obs offending vehicle through red TCS at (intersection). Collision between offending vehicle+ford resulting in fire.
Attended scene....'*⁶⁶

b) Running sheet MDT entry made in vehicle outside Frankston early am on 16/3/08

116. The running sheet was made by S/C Orr while in Frankston 615, at the Frankston Police Station. L/SC Bedarczyk was present in Frankston 615, when this record was compiled and participated by preparing the cover sheet.⁶⁷

c) Police statement of the 17/3/08.

⁶⁴ See transcript at page 1153.

⁶⁵ See transcript at page 1164.

⁶⁶ See exhibit 33A.

⁶⁷ See transcript at pages 1259-60.

117. In his statement of the 17th of March 2008 L/S/C Bednarczyk stated,

'Our emergency lights were flashing whilst maintaining an even distance of approximately 25-30 metres from the rear of the defendants vehicle. I estimated the defendant was travelling at approximately 120 to 130 kilometres per hour as it continued east

We have pursued this vehicle for approximately 500 to 700 metres as the primary vehicle, passing two civilian vehicles who had already pulled to the left. The pursuit was terminated. I then heard the audible tone to terminate the pursuit. S/C Orr then immediately deactivated our emergency lights and siren, whilst slowing down and pulling over to the side of the road a short distance east of Elisdon Drive near Prince Street.

I continued to watch the red sedan As it continued east I could see the traffic control signals facing the red car at the intersection were illuminated red. which was 350-400 metres from our 'stationary' location.⁶⁸ I observed the red car accelerate through the intersection against a red light when it then collided head on with another vehicle.'⁶⁹

d) Court room testimony from 18/08/2011

118. After L/S/C Bednarczyk read his statement to the court (17/3/08), he asked to remove the word 'stationary' from page 12, as underlined above.

119. L/S/C Bednarczyk testified that he had graduated in 1995 and served the next 10 years in general policing duties, transferring to the Frankston Traffic Management Unit, otherwise known as the Highway Patrol, in 2005, obtaining his gold licence qualification in March 2006. Thereafter, from late 2010, he had served in the Frankston Crime Scene Services Unit, having taken over the position in that unit previously occupied by S/C Orr.

120. In regard to the events of the 15th and 16th of March, L/S/C Bednarczyk led by his Counsel Mr Gipp, testified that he and S/C Orr, started work at 5.00pm when they were rostered to do a 'booze bus' duty assist, which was subsequently cancelled. Thereafter, following the completion of some paper work, he and S/C Orr went out on patrol. By that time, he had formed a good opinion of S/C Orr's capacity as an officer and as to how he would handle the vehicle, 'in any situation'.⁷⁰

121. By chance, S/C Orr happened to be driving Frankston 615 when they returned to the Frankston Police Station to write up a report on a motor vehicle accident on the Frankston Freeway. This required an MDT entry to be completed on the vehicle's computer terminal, before it was driven into the underground car park.

122. While completing this task in their vehicle outside the station both officers heard the D24 call concerning the 'Shane Bennett' pursuit which, at this stage, was heading north on the Nepean Highway.

123. In response L/S/C Bednarczyk instructed S/C Orr, 'to get us there.'

124. When queried about why he didn't take over the driving at this point, L/S/C Bednarczyk stated that the changeover might have taken 30 seconds,

⁶⁸ See below as to witness seeking to remove the word 'stationary' from his statement. See transcript page 1179.

⁶⁹ See exhibit 33 page 2-3.

⁷⁰ See transcript at page 1184.

*'30 seconds can be the difference between us getting to the pursuit or not.'*⁷¹

125. Further evidence was then given about the passage of Frankston 615 as it joined the pursuit at the Nepean Highway near Seaford as a secondary pursuit vehicle, and how it turned into Seaford and allowed the red Mazda and Frankston 251 to enter off Railway Parade. Thereafter, these vehicles led Frankston 615 up on to the highway overpass on Seaford Road and down to a position where it was again on Seaford Road, a dual lane carriageway heading east towards the Frankston-Dandenong Road intersection.

126. At this stage, L/S/C Bednarczyk was aware of the digital and analogue speedometer(s), within Frankston 615. His further testimony was that he would have to lean over towards the driver to be able to check speeds, which he was able to do,⁷² and that he so checked S/C Orr's speed whilst they were on the Nepean Highway, at which time he was doing 145kmph, at 'probably around McCulloch Avenue.'

127. He further estimated that they travelled at maximum speed of around 150kmph before they turned around on the Nepean Highway and took a left turn into Seaford Road, which he did not feel was unsafe. His further evidence was that they were engaged in urgent duty driving at that stage.

128. LS/C Bednarczyk testified that in accord with the GPS plotting he accepted that Frankston 615 was travelling at a speed of 101kmph at 00.02.06, as it neared Railway Parade.⁷³

129. There he saw the Mazda make a left turn against a red light as it entered Seaford Road with, by his estimate, Frankston 251 approximately 50-60 metres behind. At this point LS/C Bednarczyk's view was that they were there to take over as the primary pursuit vehicle, if they got the opportunity.

130. He further stated that their objective was not to pass the Mazda and this was never contemplated, but that the overall purpose was to stay a safe distance behind until the pursuit comes to an end.

*Court: Q 'And in answer to Counsels question what do you say is a safe distance behind?
Oh, it depends on each different circumstance.*

Mr Gipp: Q Well your statement on that point says you did take up a position or reached a position about 30 metres behind the Mazda, is that right?

That's correct.

Q Did you consider thatto be safe in the circumstances.

*Well in relation to my risk assessment it satisfied me that we could continue.'*⁷⁴

131. In answer to further questioning from Mr Gipp, the witness testified that he did not at any stage (again) check the speedometer(s) until the pursuit was terminated.

132. Further evidence was given by L/S/C Bednarczyk concerning the movement of Frankston 615 by reference to the plotting points and MDT data, as all vehicles made their way over the Frankston Freeway overpass, with two east bound lanes becoming one at the top of said overpass.⁷⁵

⁷¹ See transcript at page 1187-88.

⁷² See transcript at pages 1192-93.

⁷³ See exhibits 16A and 31E and transcript p.1196.

⁷⁴ See transcript at page 1200.

⁷⁵ See exhibit 31E at plotting point 00.02.31.

133. When Frankston 615 was at the top of the overpass, the witness testified that he remembered seeing the Mazda about 100 metres ahead of Frankston 251.

134. He further confirmed his earlier statement that Frankston 615 overtook Frankston 251 in the vicinity of Hartnett Drive, (see plotting point 00.02.42) and that at this point the Mazda was *'a good 150 metres or so ahead.'*

136. In further answers to questions from the Court, L/S/C Bednarczyk stated that he recalled these matters from his general recollection and had not made a record, including these specific recollections, at or about the time of the event which occurred some three years earlier.⁷⁶

137. With no specific recollection of this particular matter, his conversation with S/C Orr would have been,

*'to take up and catch up the offending vehicle.'*⁷⁷

138. The witness was then referred to the plotting point for 00.02.42 which he agreed was his position at Hartnett Drive, when Frankston 615 was travelling at 148 kmph.⁷⁸

Mr Gipp Q *'You've estimated it was 150 metres ahead. Can you recall whether 615 accelerated? Oh yes, we accelerated.*

Q *And did you catch up?*

We did.

Q *In your statement you say you got to a distance of 30 metres behind the vehicle?*

Yep.

Q *Can you say by reference to a GPS plotting point or street where ..
....in the vicinity just west of Elisdon Drive.*

Q *Plotting point 12.02.54?*

Right.

Q *Did you hear any instruction from the pursuit controller to terminate this pursuit (at this point)?*
I did.

Q *It, that direction started at 02.53 and ended at 02.57, (the evidence of Ms Smith refers)?*
Right.

Q *Did 615 take steps to take steps to abandon..?*
Yes we did.

Q *When that happened?the abandonment and you took up a position 30 metres behind.. How long were you 30 metres behind?*
It happened at the same time.

Q *You didn't check the speedometer Are you able to estimate the speed the police vehicle reached to get to 30 metres behind the Mazda?*
Well I would estimate 140-150.

Q *Do you accept having listened to the evidence in this inquest and what is referred to as the instantaneous speeds on the GPS that 615 was travelling at speeds higher than that?*
Oh, look, its still surprising to me. But you know, if the GPS is accurate well yeah I have to concede it.

Q *Did you reduce your speed to maintain this even distance behind the Mazda of 30 metres?*

⁷⁶ See transcript at page 1210.

⁷⁷ See transcript at page 1211.

⁷⁸ See exhibit 16A. The attributed speed was said to be consistent with his recollection.

Oh yes that would have happened . That's right to maintain a distance Yes.

Q That you believe is travelling between 120-130?

Mmm.

Q Can you tell His Honour how long you were travelling at that 120,130 speed before you abandoned the pursuit?

It was hardly any time at all.

Q So it all happened at the same time?

Yeah.

Court: Q Now at that time your driving at a very fast speed (177 kmph approx)?

Yes ...

Q from your own estimate at 60kmph faster than the Mazda

Yes that's how it worked out.

Q I'm just trying to put myself in the position of a driver or passenger in the Mazda. It must have been like an enormous force rushing towards them at a very high speed and overtaking them or reaching a position where it could overtake them momentarily, very very quickly?

...Well we caught up...I wouldn't believe its an enormous force.

I guess that's in the mind of the beholder.

Q At a 60 kmph faster speed than the Mazda was travelling?

..Yes

Q How does your risk assessment take into account the driver's likely reaction to your extremely fast passage towards his vehicle, (in that situation)?

.. Well that's why we maintain an even distance and don't go too close. I can't speak for how he - what these people think.

(and)

.. Well if we believe its too close we can make adjustments. Depending on the environment, the road what's going on around us we make adjustments the entire way. That's what a risk assessment is all about.'⁷⁹

139. L/S/C Bednarczyk further testified how they 'washed off speed' and that they did not get to this high speed and slam on the brakes. He also stated that the 'washing off', of speed occurred at a 40 or 50 metre gap to the Mazda.⁸⁰ His further evidence was that Frankston 615 reached its lowest speed as they passed, near Prince Crescent.

140. L/S/C Bednarczyk also stated that they reached this speed in a slow and steady manner, and that at its slowest speed, Frankston 615 was driven at walking pace, at which point the collision occurred. Thereafter, they hurried to the collision scene and this was the reason they failed to come to a stop as required by the Victoria Police Manual and that it took them about 20-25 seconds to reach the scene.

141. L/S/C Bednarczyk's further evidence was that they did not respond to the abandonment direction, because the airways were busy and later because his focus shifted.⁸¹

142. L/S/C Bednarczyk testified that his use of the words 'pulled over' in his police statement constituted an error on his part.⁸² His further testimony was that the words '*maintained an even distance behind offending vehicle*' was also (in error) as he only maintained that distance for a few seconds.'

⁷⁹ See transcript at pages 1213-18.

⁸⁰ See transcript at page 1224, which I note is in conflict with earlier evidence at page 1215-16.

⁸¹ See transcript at page 1231

⁸² See transcript at page 1256.

Q 'Maintain' suggests 'continuous'.

*It does but we are looking at a split second before it was terminated.*⁸³

143. L/S/C Bednarczyk also confirmed his participation in the preparation of the computer Mobile Duty Sheet, completed largely by S/C Orr, at 00.03.45.⁸⁴ He testified that he did not sign the mobile duty sheet, although aware he was required to do so. His further evidence was that the statement included by S/C Orr that 615 pulled over, was in fact incorrect,⁸⁵ and that he didn't report to the controller during the pursuit because he didn't see the need to as Frankston 251 was available to perform that function.⁸⁶

Court: 'I imagine (after the incident) and after the chasing of and subduing of a couple of young men, who resisted arrest, following theft of a flare,that he must have been physically and emotionally exhausted?'

*...S/C Orr was 'professionally composed throughout the entire period.'*⁸⁷

144. L/S/C Bednarczyk further testified that he and S/C Orr finished work at 7.30am that morning. He did not recall discussing his notes with other officers involved in the pursuit, prior to his departure, but was sure he would have. He was aware that the normal protocol in such situations was that either the MCIU or ESD, would take a formal witness statement, and that this would usually occur on the same night.⁸⁸ He was informed that MCIU was to be the investigator but only one MCIU officer (Shane Miles), attended and it was determined that they did not have sufficient resources available at that time, and would return the next day, Monday.

145. In regard to the meeting on 2nd December 2008, L/S/C/Bednarczyk testified that he didn't recall Inspector Talbot raising the issue of whether S/C Orr had stopped his vehicle following the order to abandon.⁸⁹

'I did not believe the speeds on the animation. I did not give credence to anything else he provided'.

146. In further examination by Mr P Lawrie for the Commissioner, L/S/C Bednarczyk, testified that if S/C Orr made the decision to abandon, *'I wouldn't counter that. I wouldn't expect him to make that decision in consultation with me.'*⁹⁰

147. In further response to questions from Mr A Burns, Counsel assisting, L/S/C Bednarczyk stated that when he used the expression 'pulled over,' in his day note he was referring to their virtual stand still, in the vicinity of Prince and Henry Crescent.⁹¹

⁸³ See discussion at 1256-57.

⁸⁴ See transcript at page 1259-60.

⁸⁵ See transcript at page 1261.

⁸⁶ See transcript at page 1262

⁸⁷ See transcript at page 1265.

⁸⁸ See transcript at page 1271.

⁸⁹ See questions by Court and answers at transcript page 1281/82.

⁹⁰ See transcript at page 1296.

⁹¹ See transcript at page 1315.

148. He then agreed that the term meant 'stationary', and that he wasn't focusing on that, but on the accident.

149. His further evidence was that he didn't read S/C Orr's notes in regard to this matter and that he didn't recall speaking to Mr Torcasio on the 17th March before he made his statement.⁹²

150. In further examination by Mr Burns, L/S/C Bednarczyk repeated his earlier evidence that he didn't recall that during the 2nd December meeting with Inspector Talbot, the question of whether they came to a stop in Frankston 615 had been a focus of that discussion. While accepting Inspector Talbot's evidence on the matter (that both speed and the question of Frankston 615 stopping), had been the focus, his evidence was that he just didn't remember that aspect. In further questioning by Mr Burns, L/S/C Bednarczyk agreed that he had become competent in estimating speed and that he was confident in his estimate that Mr Bennett's vehicle was travelling at between 120-130kmph.

And that when we drew close we got to a distance of approximately 30 metres behind.

Q Were you interested to look at your speedo (to compare speed?)

We were conducting a risk assessment. I had plenty of things going on in my mind.⁹³

Your notes indicate that you maintained an even distance?

(Yes for) 1 second maybe 2.⁹⁴

151. After further examination on the question of speed and distance travelled, L/S/C Bednarczyk then accepted that if he travelled at 177kmph that would mean travelling at almost 50 metres per second. He further testified that they 'washed off speed', although he couldn't say whether at any time they had managed to 'washed off' enough speed to match him exactly, i.e. to travel at an even distance (behind him).⁹⁵

152. L/S/C Bednarczyk's further evidence was that S/C Orr responded by slowing when they heard Sgt Kraus, call off the pursuit.

153. The witness did however accept that if the Mazda was just past Elisdon when the call to abandon was made, (S/C Orr's evidence and the diagram Exhibit 31E), then Frankston 615 was there at 00.02.53-57 seconds, (with the Mazda 30 meters in front);

That Elisdon was 670 metres from the intersection;

That if Mr Bennett maintained a speed of 120kmph from Elisdon, he would reach the point of the collision after a period of 20.33 seconds;

That from the 251 'come to grief call,' (exhibit 19B), that the collision has occurred by 3.20 seconds, say 3.17 seconds.⁹⁶

Q When you say... that Mr Orr began to slow at 00.02.57 ... when did he get to his slowest point that he was travelling at?

... somewhere in the vicinity of Prince Crescent and Henry Crescent ...

Q How long did that take?

I can't put a time on that.

⁹² See transcript page 1320.

⁹³ See transcript at pages 1335/6.

⁹⁴ See transcript at page 1337.

⁹⁵ Transcript at page 1338.

⁹⁶ See transcript at pages 1339/1341.

Q The evidence from Mr Bellion (Detective Senior Sergeant and reconstruction expert) is that a vehicle travelling at 135 kilometres per hour braking at 0.5G will stop in 8.6 seconds, do you accept that?

Expert evidence I have to accept that.⁹⁷

... Your evidence as to your slowest point has you somewhere between Prince and Henry (at 00.03.03 seconds)?

I agree that's 6 seconds after the point that we were at Elisdon; I agree that's faster than suggested by Senior Sergeant Bellion in Exhibit 32.

S/C Orr didn't brake hard.

Q I suggest to you that the data suggests (you slowed down) well after Prince and Henry, (and instead between Bellvue and Ti Tree).

That was my recollection.

Q Is your evidence this that you were still in motion albeit at a walking pace a second before Mr Bennett's collision?

That's what I recall.

Q If that's right you have taken 19 seconds to stop do you agree with that

Well if that's what the figures state.⁹⁸

And later

Q Do you agree your recollection can't be correct?

No (I am agreeing ...).

Q I suggest to you that the GPS shows that your vehicle was just west of Ti-Tree at 00.03.18 seconds?

Yes.

154. L/S/C Bednarczyk then agreed that his recollection of events could not be correct based on the data.⁹⁹

155. L/S/C Bednarczyk also confirmed that he had been aware of the busy nature of the intersection.

156. In further questioning by the Court, L/S/C Bednarczyk maintained that he continued with his risk assessment in these circumstances, until the controller ordered abandonment.¹⁰⁰

157. He also maintained that he did not have time to look at the speed of his own vehicle, and that he remained comfortable with its speed.

Evidence given by Detective Sergeant Frank Torcasio, ESD

158. Detective Sergeant Torcasio tendered his notes,¹⁰¹ which included materials taken from the four occupants of Frankston 251 and Frankston 615, after he visited the collision scene on the early morning of the 16th of March 2008.

159. He testified that the responsibility for the investigation lay with the MCIU.

⁹⁷ See transcript at 1341/42 and further comments by witness concerning both Mr Bellion's expertise and acceptance of his methodology, at page 1346.

⁹⁸ See transcript at pages 1347/8 and from 1353.

⁹⁹ See transcript pages 1354/1356.

¹⁰⁰ See transcript at pages 1357/62.

¹⁰¹ Exhibit 34

'My role was to oversee Inspector Talbot's investigation. Inspector Talbot shares his investigation with me and I share my information with the Office of Police Integrity (OPI).'

160. D/S Torcasio further stated that he returned to the station with the members arriving at 4.05am. He obtained copies of the day notes, which he read at the time. All said that both vehicles Frankston 251 and Frankston 615 became stationary after the abandonment was called, except for that of S/C Orr, who stated that he, *'slowed down but didn't mention that he'd come to a complete stop.'*¹⁰²

161. According to D/S Torcasio, he accepted that 'pulled over' can only mean stationary.

Q Did you read S/C Orr's formal statement after the 17th of March?

Yes I did.

Q Did you see the discrepancy whether it stopped or slowed?

...Yes, it could have required a bit more clarification as to what he meant by that term. ¹⁰³

162. He further stated that he did not come to read this statement until after the 17th of March, and did not think it was an issue, and did not discuss it with Inspector Talbot. He would normally expect the statement taking to occur on the same day, or without delay, and be in Question and Answer (Q & A) form, with the statement taker asking Questions before he types it up. He would also normally expect the witnesses to be 'separated.'¹⁰⁴

163. He further testified that after leaving the Frankston Police Station early on the Sunday morning, he later went to the Alfred Intensive care unit to make inquiries about the well-being of the driver of the red Mazda (Shane). Early the next morning (Monday 17th), he contacted The Alfred again and was informed that Shane's brother was with him, that Shane was in a critical condition and that his family was, 'flying in'.

164. D/S Torcasio further testified that on the Sunday there was a 'resourcing problem' concerning the availability of S/C Miles from the MCIU, and so the statements were put back to the Monday.

165. Following the statement taken on the Monday afternoon, Mr Miles gave D/S Torcasio a copy of the statements. These were later placed by the witness in his working file.

166. In regard to the GPS data, D/S Torcasio testified that Inspector Talbot informed him of the concerns he had about the witness statements and discrepancies within that material as against the GPS data. On numerous occasions Inspector Talbot and Inspector Oberin, who had Victoria Police oversight responsibilities concerning ESTA and D24, discussed the matter.

Q Did you discuss the matter of (immunity)?

Yes. Inspector Talbot and I did. We discussed that provided they did not make false statements... that there would be no repercussions (for the members), from making new statements based on evidence that was not previously available. ¹⁰⁵

¹⁰² See transcript at page 1575.

¹⁰³ See transcript at page 1574.

¹⁰⁴ See transcript at page 1576-77.

¹⁰⁵ See exchange at transcript page 1584.

167. In further questioning by the Court, D/S Torcasio testified that he was not aware that on the Monday, Mr Miles had not taken statements from the members in a Q & A form and that he hadn't given a direction as to how the statements were to be taken.

168. The witness further agreed that Q & A statements from members, was an appropriate format, and that such an approach had now become ESD practice, though it was not at that point in time.

169. In regard to the inconsistency in S/C Orr's day note and original statement on the matter of his stopping Frankston 615 following the order to abandon the pursuit, Det. Sergeant Torcasio's evidence was that he didn't think it was an issue and that this view didn't change following his receipt of the GPS evidence, which he discussed with Mr Oberin.

170. When questioned as to why he didn't seek to establish the accuracy or otherwise of the GPS data, given that it appeared to contradict members on questions of both speed and passage (i.e. did Frankston 615 come to a halt or not or otherwise disengage?), Det. Sergeant Torcasio stated that there were difficulties relating to 'contractual matters,' to be faced in getting that information.¹⁰⁶

Procedural Fairness

171. The existence of evidence concerning the GPS technology and its application to issues of vehicle speed and passage was made known to the four concerned members at the Frankston Police Station on the 2nd of December 2008.

172. Thereafter, supporting evidence in relation to the accuracy and interpretation of that evidence was made known to each member as it became known, which at least during the inquest often occurred because of issues vigilantly canvassed on their behalf by Mr Gipp.

173. This evidence was given and otherwise provided to the Court and to all interested parties, before the officers were called to testify.¹⁰⁷

174. It is also the case that the fact that new technology was being used in a Victorian Court, to seek to help prove matters not to my knowledge previously proven in this manner, led all parties to proceed with an abundance of caution.

175. Having reviewed these matters again, I am quite satisfied that each member was accorded procedural fairness, during the course of this investigation.

Findings

176. I formally find that the deceased was Shane Bennett, born on the 2nd May, 1988 and that he died on the 17th March, 2008 at the Alfred Hospital located at Commercial Road, Melbourne; and that the medical cause of his death is 1 (a) Closed Brain Injuries and 1(b) Motor Vehicle Accident.

¹⁰⁶ See transcript at pages 1594-95.

¹⁰⁷ While there was later discussion and evidence confirming that the time code was UTC time for all systems concerned including Motorola, GPS Data and ESTA (the then D24), and the Telstra talking clock, it was clear (and the members knew), that they had to be the same (either GPS or UTC),- because as at that time those time clocks were approximately 15 seconds apart. It was common ground that the D24 time statement could not be 15 seconds out from the Motorola GPS data. For completeness sake, Motorola and ESTA provided evidence that their respective data before the inquest, was in UTC time.

177. After consideration of all of the evidence, I am satisfied that the GPS technology employed in this case has provided a reliable record of the speed undertaken and the passage of police vehicle Frankston 615, during its pursuit of the Mazda driven by Shane, in the early morning of 16th March, 2008, the subject of this investigation.¹⁰⁸ Following a review of this evidence in the light of the observations of various eyewitnesses to the events the subject of this investigation and having paid particular regard to the length of time involved in these various sightings and to their position and perspective relative to the vehicles immediately engaged in the pursuit and following a consideration of the agreed chronology¹⁰⁹ together with all of the rest of the evidence as well as counsel's submissions, I further find that:

178. L/S/C Bednarczyk and S/C Orr have both provided distinguished service to the community in their role as police officers, in careers spanning eighteen and nine years, respectively.

179. S/C Orr, at all relevant times the driver of Frankston 615, held a silver classification license, which allowed for speeds to a maximum of 150kmph during emergency duty driving. On the 15th March 2008, S/C Orr was a third time driver in a police pursuit with a minimal previous relevant experience in a gold class 8-cylinder, six litre Holden Commodore TMU vehicle, which he was called upon to drive that night.¹¹⁰

180. His senior in vehicle Frankston 615, L/S/C Bednarczyk, was a highly experienced pursuit driver with a gold classification licence authorising him to undertake properly authorized pursuits at unlimited speed, as the need arose.¹¹¹

181. The pursuit commenced at 23.59 and 35 seconds on the 15th March 2008, the time of the first radio submission by Frankston 251 advising that they were in pursuit, as recorded by the D24 tape.¹¹²

182. Shane was then pursued north along the Nepean Highway where Frankston 251 reached a top-recorded speed of 154 kmph, this in an 80 kmph zone.¹¹³ The maximum speed attained by the Mazda during this time was estimated by Sergeant Whitehead to be 120-130 kmph.¹¹⁴

¹⁰⁸ I satisfied that the information supplied through Motorola personnel Messer's Sidebottom and Stanley, about average speeds and instantaneous speeds and the passage of both police vehicles Frankston 615 and Frankston 251, was reliable and accurate. I adopt here the remarks of Counsel representing the Commissioner for Police, who observed at page 1 of his written submission that,

"1) This inquest was the first occasion upon which GPS data derived from the Mobile Data Terminals (MDT), within Victoria Police vehicles involved in a pursuit had been the subject of examination. The polling of this GPS information via the MDT system produced data points, most often every three seconds, during the course of the pursuit. Each GPS data point carried a suit of information including: the vehicles instantaneous speed; the vehicles location (as latitude and longitude); and the time associated with the data point. These three aspects of the GPS information were the subject of considerable controversy throughout the inquest. Various witnesses gave evidence about the accuracy of the system and the manner in which it worked but important questions persisted which could only be settled after the receipt of further evidence.

2) The examination of the GPS issues has provided a deep level of insight into both the GPS and the MDT, which permits a high degree of confidence in the robustness of the information carried in each GPS data point."

¹⁰⁹ See Exhibit 20.

¹¹⁰ See photographs at Exhibit 31B.

¹¹¹ L/S/C Bednarczyk testified that he had previously participated in 20-30 pursuits, the majority of those on a motorcycle. Exhibit 3, Victoria Police Manual (VPM), at 102-2. It is not in dispute that the pursuit of Shane Bennett constituted 'urgent duty driving,' within the meaning of the VPM.

¹¹² See exhibit 27E(1) the D24 tape 1 (with time), of the relevant radio broadcasts and transcript of the D24 recording at exhibit 19B. See also the agreed chronology at exhibit 20.

¹¹³ See exhibit 16A at 12.00.39 seconds and exhibit 22A which shows that Frankston 251 reached this speed near the intersection of the Nepean Highway and Seaford Road.

¹¹⁴ See the evidence of Sergeant Whitehead contained in his statement at exhibit 39.

183. Shane proceeded to turn right and then travel through various side streets. He also went through a red traffic light at approximately 00.01.30 seconds, at the intersection of Railway Parade and Station Street.¹¹⁵ Shane then drove over the train line and down Railway Parade and subsequently left onto Seaford Road, going through another red light on Seaford Road.¹¹⁶

184. Shortly thereafter, Frankston 615, (driven by S/C Orr, with LS/Const Bednarczyk observing and supervising), approached the pursuit. Frankston 615, a TMU vehicle, was then directed by Hastings 251 to take over the pursuit.¹¹⁷

185. The pursuit controller, Sgt Krause, Hastings 251, gave the order at 00.02.20 seconds on Sunday, the 16th of March 2008.

186. It is apparent from his statement that Sergeant Krause was unaware that it was S/C Orr rather than the gold licence holder, LS/C Bednarczyk, who was driving Frankston 615 during the pursuit.¹¹⁸

187. Frankston 615 took over as the primary pursuit vehicle at 00.02.41 seconds, the overtaking occurring at the location of Hartnett Drive on Seaford Road.¹¹⁹ On overtaking S/C Orr continued to accelerate reaching speeds of 148 kmph at 00.02.42, and after a minor reduction to 134kmph at 00.02.45, speeds of 164 kmph and 177 kmph at 00.02.51 and 00.02.54 respectively. These speeds were reached over an area of roadway where the maximum permitted speed, for members of the public, was limited to 60 kmph.

188. During this time I am satisfied that Frankston 615 made substantial inroads on the gap to Shane's vehicle. It is also the case that both officers S/C Orr and LS/Const Bednarczyk, understood that their narrowing of the gap continued in the context of both vehicles speeding in the direction of the Frankston-Dandenong Road, a light controlled intersection, which was surrounded by an area which included various late night food outlets, as well as the Seaford Hotel.

189. I am also satisfied that both officers recognized that they were approaching the Mazda at a speed which was far in excess of the maximum speed, of which the Mazda itself was capable.

190. I further find that at all material times Shane was aware that he was being pursued by Victoria Police officers and that he was lawfully required to bring his vehicle to a stationary position. It is also relevant that earlier that evening he consumed cannabis, which is likely to have adversely influenced his perception, judgement and reaction time.

191. Sergeant Krause gave the order, to discontinue the pursuit at 00.02.53 seconds, and the D24 communication operator later sounded the pursuit abandonment tone to all vehicles in the vicinity at 00.03.08 seconds.¹²⁰ I note that the order was given by Sergeant Krause just after he received a report from Frankston 251, or was otherwise aware that,

¹¹⁵ See the calling of this incident on the D24 transcript at exhibit 19B and the evidence of Sergeant Whitehead at 1545.

¹¹⁶ See D24 transcript, *ibid*.

¹¹⁷ Hastings 251 was also a TMU vehicle and the driver Senior Sergeant Krause, (deceased), was the designated police controller of the pursuit.

¹¹⁸ See exhibit 36 page 4. It is not known whether the knowledge that it was a relatively inexperienced driver who was at the wheel, would have further impacted upon how the pursuit controller managed this pursuit.

¹¹⁹ See Exhibit 23A. See also the discussion of this matter in the evidence of Sergeant Whitehead at transcript page 1545,

¹²⁰ The pursuit abandonment tone was activated by the D24 operator in accord with practise and notified all vehicles in the area of the controller's earlier direction.

- a) Frankston 615 had taken over as the primary pursuit vehicle,
- b) the vehicles were heading towards the light controlled intersection with the Frankston-Dandenong Road and the nearby Seaford Hotel and other late closing commercial premises; and
- c) that the speeds of both Frankston 615 and the Mazda were estimated to be 120 kmph.¹²¹

192. Frankston 251 responded to the abandonment direction and by 00.03.05 seconds, had abandoned the pursuit, and acknowledged doing so in accordance with the VPM.¹²²

193. No such acknowledgement of the order came from Frankston 615 which, while slowing after the abandonment direction, did not stop or nearly stop before the collision occurred.¹²³

194. Frankston 615 was still travelling at 72 kmph at 00.03.09, by which time it was just before Bellvue Crescent. This was a minimum of 12 seconds after completion of the order by the controller to terminate (00.02.53-57). I also note that S/C Orr had commenced to reduce his speed after attaining a maximum speed of 177 kmph at 12.02.54 seconds.

195. Expert evidence given by Senior Sergeant Bellion further established that the time needed to safely pull over a TMU vehicle travelling at a speed of 169 kmph reached at 12.03.00, was 10.6 seconds and that this would be achieved within a distance of 249.9 to 272 metres.¹²⁴

196. It is further relevant that this speed and the controller's earlier direction to abandon (at 12.02.53-57), was given when Frankston 615 (at 12.03.00), was located on Seaford just before its intersection with Prince Crescent, 534 metres from the point of the collision, which occurred at approximately 12.03.17, a minimum of 20 seconds after the abandonment call.¹²⁵

197. It was not in dispute that S/C Orr and L/S/C Bednarczyk both heard the controller's direction, and I find that his broad slowing from that time, was undertaken in partial response to that direction.¹²⁶

198. On his approach to the intersection, the evidence suggests that Shane would have seen the red light facing him and also have been conscious of the presence of Mrs McCready's Ford Falcon. Part of the way into the intersection Shane applied emergency braking causing his wheels to lock and his tyres to skid. This left a set of tyre marks on the road surface which marks continued to the point of impact with the Ford Falcon which had been in the process of turning right out of Frankston Dandenong Road into Seaford Road. A reconstruction of the collision carried out by police reconstruction expert Sergeant Urquhart suggests that at the point of collision the Mazda was travelling at a speed of approximately 86 kmph.¹²⁷

¹²¹ See below as to the significantly greater speed at which Frankston 615 was actually being driven at this time. See exhibit 19B. See also the controllers statement at exhibit 36, where he incorrectly states that the speed reported by Sgt Whitehead was 130 (rather than 120), and that he was familiar with the surrounds, 'and the intersection and its surrounding business premises. Given a consideration of these factors I decided to abandon the pursuit.'

¹²² See Exhibit 22F.

¹²³ Both Orr and Bednarczyk agreed that they heard the direction to discontinue given by the controller, as well as the later abandonment tone. See transcript page 1023-24 and Exhibit 31, Orr, and page 1213, Bednarczyk.

¹²⁴ See also exhibit 32 at page 5 where Senior Sergeant Bellion sets out his opinion as to stopping distances and times for a TMU vehicle reference speeds of 135 and 148 kmph.

¹²⁵ The time of collision is assessed by reference to the communication from Sergeant Whitehead, the passenger in Frankston 251, of the fact of the collision. See exhibit 19B.

¹²⁶ See finding at paragraph 210-212 below. In so finding I reject the contrary submission made on behalf of the members and the Commissioner.

¹²⁷ See the evidence of A/Sergeant Urquhart at Exhibit 18.

It was not in dispute that this light controlled intersection was an often-busy roadway, likely to see traffic use at any time of

199. At all material times Shane drove his vehicle in a manner which constituted a serious threat to the wellbeing of himself, as well as to other road users travelling east on Seaford Road, in the vicinity of his vehicle.

200. With respect to the actions and decision making of the occupants of Frankston 615, I find that I do not accept the evidence given by L/S/C Bednarczyk and S/C Orr as truthful and that I did not believe them. In so finding, I note that at times the testimony of both was inconsistent with the evidence established by the GPS technology.

201. I also note the further inconsistency between their testimony about the passage and speed of Frankston 615, and the expert evidence provided to the Court in regard to the time needed to effectively brake such a vehicle by Senior Sergeant Bellion.

202. It is also the case that there was inconsistency within the evidence given by each, and between their testimony and their original police statements,¹²⁸ and between the daybook note made at the scene by S/C Orr, and his later MDT log and police statement.

203. As a result, I am unable to ascertain from their testimony what they saw or what was said between them, while they remained within their vehicle, or thereafter.

204. I have now further directed myself concerning the remaining evidence and the evidence of the eyewitnesses, including the evidence of the occupants of Frankston 251 and the statement of the pursuit controller Sergeant Krause,¹²⁹ and as to how and in what circumstances inferences might be properly drawn about the operation of Frankston 615, from that remaining body of evidence. I have also directed myself concerning the standard of proof, which applies in Coronial Inquests.

205. Having so directed myself, I find that I am satisfied that at all relevant times, L/S/C Bednarczyk and S/C Orr had unfettered visual access to the speedometer(s) within their vehicle, which accurately informed them as to the speeds at which they were travelling.

206. At all relevant times both officers were broadly aware of the speeds at which they were travelling, or that from time to time they separately and deliberately 'turned a blind eye' to this issue.

207. At 00.02.53 seconds and over the next few seconds, both officers heard the controller's direction to discontinue, this during the point when they attained their maximum speed of 177 kmph at 00.02.54 seconds.

208. I note here that in a properly conducted pursuit both the driver and his observer are placed under a certain level of pressure. On this occasion, S/C Orr in particular, is likely to have felt pressured by a combination of his grossly excessive speed and his raw inexperience in the role.

the day or night.

¹²⁸ In all the circumstances, I consider the omission from their earlier statements etc of information about their actual speed, to constitute a misleading record of what actually occurred.

¹²⁹ See the unsigned statement of Sergeant Krause, (deceased), setting out inter alia, his reasons for ordering abandonment, at exhibit 36.

209. I find that S/C Orr received little or no assistance in regard to his manner of driving from his senior, L/S/C Bednarczyk. It is also the case, however, that S/C Orr himself chose to ignore the general limit placed upon his driving at a high speed, of which he was aware.

210. I find that following his receipt of the termination direction (00.02.53), S/C Orr commenced to reduce his speed, but with intent, did not bring his vehicle to a halt (or near halt) or otherwise disengage in accord with the termination direction, although he had a more than sufficient opportunity to do so, (before the collision occurred).¹³⁰

211. Instead, I find that while slowing he continued to drive intending to maintain contact, albeit at a decreasing speed and at an increasing distance behind the Mazda, and that this conduct continued until he and his colleague witnessed the collision.

212. While Frankston 615's lights and siren were turned off, I am satisfied that the intention of maintaining a visual and geographical proximity to the red Mazda remained, despite both S/C Orr and L/S/C Bednarczyk knowing that the controller's direction to abandon the pursuit required them to disengage and pull over.

213. I further find that these actions subverted the efforts of Sergeant Krause to manage the pursuit in any meaningful way, and that a reasonable and appropriate system for managing a pursuit was frustrated, by the actions of both officers.

214. As to the risk analysis, both officers were familiar with this stretch of Seaford Road, and that it was a designated 60 kmph zone, leading towards a light controlled intersection and a commercial area, quite usually the scene of late night patronage.

215. While engaged in the pursuit S/C Orr drove for a significant period without regard to any properly conducted risk analysis in a manner which created a serious threat to the wellbeing of himself and his colleague.¹³¹

¹³⁰ I am satisfied from the evidence of Senior Sergeant Bellion (see statement at Exhibit 32) and all of the remaining evidence, that notwithstanding his speed, there was a more than sufficient opportunity for Frankston 615 to pull over, (this before the collision occurred), had S/C Orr determined to so act.

¹³¹ S/C Orr's driving also had an ill-considered potential concerning Shane, who had already, by his actions, demonstrated a manifestly irresponsible attitude. Additionally, I find that neither officer had any reason to believe that their actions, i.e. a pursuit conducted at high speed, would cause Shane to desist from his course of conduct. I also find that the officers gave little or no consideration to the possibility that they would be able to trace the driver by pursuing a more orthodox line of investigation. In all cases of police vehicle pursuit, it is axiomatic that officers have no way of knowing how a suspect is likely to react under the pressure created by the pursuit. As difficult as such a consideration is, this understanding should always form part of the officers on-going risk evaluation. In this case, Shane Bennett's hostile predilection to police officers generally, together with his earlier consumption of cannabis, meant that the possibility that he would respond appropriately to the pursuit was always unlikely. (See the evidence of Arron Bennett discussed above, together with the evidence of his ongoing unlawful conduct during the pursuit, which evidence together establishes to my satisfaction that Shane Bennett generally maintained a hostile and otherwise poor attitude towards police officers).

Prior to and during the course of the pursuit, Shane Bennett was suspected concerning displaying false number plates and failure to stop together (I expect), with other accumulating driving related offences. During the period of the pursuit, there was no sufficient reason for either officer to suspect that Shane Bennett was evading arrest for any more serious pre pursuit conduct. Further, in the absence of reasonable grounds for such a suspicion, his failure to stop could not properly be assumed by the officers to suggest that more serious criminal conduct had occurred, or was occurring.

See transcript page 1010 and 1240 where S/C Orr and L/S/C Bednarczyk respectively, discuss their suspicions concerning the Mazda driver, and the then applicable VPM which does not suggest such the relevance of such an approach.

216. I find then that neither L/S/C Bednarczyk, nor S/C Orr took sufficient care when assessing the risks involved in their chosen course of conduct and that the attitude of L/S/C Bednarczyk, in particular, and his understanding of the concept of risk assessment (as expressed in his evidence set out above), was badly lacking in substance.

217. It is also relevant that both officers had earlier heard Frankston 251 call in a speed of 100 kmph, which was seen to meet with the controller's approval.

218. The subsequent failure of L/S/C Bednarczyk to call in their significantly faster speeds, resulted in the pursuit controller remaining uninformed about this matter, and therefore unable to intervene and terminate their involvement in the pursuit.

219. Similarly, L/S/C Bednarczyk's failure to call in a response to the abandonment direction also further isolated both himself and S/C Orr from the controllers (immediate) inquiry and supervision.

220. The evidence collected in this case might normally establish (the inference of) a nexus between the conduct of the occupants of Frankston 615, and the decisions made by the driver being pursued (Shane Bennett).¹³²

221. It is relevant however that the (circumstantial) evidence does not allow me to make a determination of what was going through Shane's mind during the pursuit and whether he was aware of the speeds reached by Frankston 615, and how he responded to that knowledge. Similarly, I do not know whether Shane was aware that Frankston 615 had commenced to slow down, and later came to turn off its lights, and how he responded or would have responded to that information.

222. In this regard, I find that Shane's general hostility towards police, the evidence of his driving on that night and the likely impact of his earlier use of cannabis does not permit me to safely draw any inference(s), about his perception of, or likely responses to these matters.¹³³

223. Following their return to the Frankston Police Station S/C Orr and L/S/C Bednarczyk, while still inside Frankston 615, completed the Mobile Duty Return exhibit 31D. Having regard to the contents of this Exhibit, where S/C Orr noted at page 3 that he had 'pulled over,' and his earlier contradictory Daybook note Exhibit 31A, and to the general demeanour in the witness box of L/S/C Bednarczyk, I find that while in Frankston 615, L/S/C Bednarczyk exercised an unhelpful influence over the content of this Mobile Duty Return entry.

224. I further find that later at the Frankston Police Station, neither S/C Orr or L/S/C Bednarczyk (or the objectives of this Inquest), were assisted by the failure of Detective Sergeant Torcasio, ESD, to insist that separate statements were taken forthwith, from both officers.¹³⁴

¹³² I do not accept the member's submission that such an inquiry is outside the parameters of the Coroners Act 2008.

¹³³ The evidence from the occupants of Frankston 615, does not permit a finding as to how close Frankston 615 came to the Mazda. (although I note that the GPS evidence concerning the speed 615 and the time of the collision is not inconsistent with the evidence of the officers concerning this matter.) See also the discussion below in regard to recommendation 2, concerning the possible future access to the national digital satellite system and to the potential for a real time visual recording of all parties to a pursuit, and the potential for that data to be immediately available to a third party, (or pursuit controller).

¹³⁴ Mr Torcasio stated that there were not enough staff to take the statements from the four occupants of both Frankston 251 and 615 on the Sunday morning and that witnesses were told to return to Frankston Station on Monday morning when statements would be taken. His further evidence was that the witnesses returned on the Monday morning and were later asked to make non Q and A statements and that they were not 'separated' during this intervening period.

225. I note that the parties met again the following afternoon, after a delay of approximately 36 hours from the pursuit.

226. At this point Detective Sergeant Torcasio's rather too low-key approach, failed to ensure that S/C Orr was directly questioned about the discrepancy between the account of the pursuit he obtained from S/C Orr at the collision scene,¹³⁵ and the version he later gave in his running sheet¹³⁶ and written statement.¹³⁷

227. I further find that such an approach took from that officer, (and conceivably L/S/C Bednarczyk as well), an opportunity to address the falsehoods contained within his written statement, at an early stage.

COMMENTS AND RECOMMENDATIONS

Pursuant to section 67(3) of the Coroners Act 2008, I make the following comment(s) connected with the death and pursuant to section 72(2) of the Coroners Act 2008, I make the following recommendation(s) connected with the death:

Comment 1

Having regard to Victoria Police policy concerning pursuits, I find that there is a great potential for conflict between the need to conservatively assess the risks involved in continuing with any particular pursuit, and to respond appropriately to that assessment, on the one hand and the practice of attempting to bring suspects to justice, without proper regard to an ongoing risk assessment, (on the other).¹³⁸

I note that the then existing pursuit directions, as set out in the Victoria Police Manual of the time, direct that the objective of bringing suspects to justice, should be continually weighed against the competing public interest issues, which uniquely arise in a police pursuit.¹³⁹

While this matter has not been made the subject of further inquiry, I observe that the then applicable sections of the manual (and indeed the present manual directions), appear to give little direction to the reader concerning how to go about actually balancing these conflicting considerations. I do not know however, and make no comment concerning whether the training, then supplied to officers, as to how in practical terms they should make such assessments, was adequate.

I further observe here my view that such an approach should always favour the abandonment of the pursuit, when the risk assessment concludes that the risk of accident/collision, appears to be rapidly increasing, or otherwise becoming more probable than when the pursuit commenced.

¹³⁵ See S/C Orr's daybook record dated 16/3, at exhibit 31A, where he stated that he had not stopped 615 before the collision and L/S/C Bednarczyk's contradictory account in his own daybook record. Det Sergeant Torcasio alone among the investigating officers, was aware of this contradiction.

¹³⁶ Exhibit 31D

¹³⁷ See S/C Orr's non Q&A statement dated 17/3, at exhibit 31, where like the other officers he stated that he had driven (615), at (by inference), a permitted speed and stopped before the collision, all in accordance with the controller's direction.

¹³⁸ I note that the large number of youth fatality accidents in recent years, arising during or otherwise connected to police pursuits, has led to a wide-ranging debate about the manner in which such pursuits are currently managed. The Coroners Prevention Unit has, at my request, produced a breakdown of all police pursuit related deaths between the 1/1/2000 and the 30/1/2012, which I attach to this finding at attachment 2. As indicated, the statistical contents include reference to some more recent incidents, which are only indicative, and subject to more formal findings in yet to be concluded Court investigations. Assuming their broad accuracy, the contents of the CPU Report again underlines the need to ensure that fully defined pursuit policy objectives are put in place, and are supported by carefully managed training and supervised practise, which matters are both made the subject of regular review.

¹³⁹ See Exhibit 3, the then applicable Victoria Police Manual.

Speed, driver control and relevant environmental factors such as the possible impact upon other road users, should be pre-eminent considerations in this analysis.¹⁴⁰

Turning now to the management of the pursuit, I am satisfied that Senior Sergeant Krause, quite properly made the decision to abandon as soon as he learnt, (that it was being suggested), that 'speeds had reached 120 kmph in a 60 kmph zone.'¹⁴¹

It is also relevant that he made his decision to abandon, having regard to the unpredictable consequences of the pursuit speeding towards the up-coming Frankston-Dandenong Road light controlled intersection and in the further circumstances of the occupants of 615 themselves, not already having abandoned.

Having reviewed the actions of Sergeant Krause, in particular, and the system employed to manage this pursuit, I am satisfied that the practice of involving a pursuit controller is a well-crafted solution which has the potential to properly meet the needs of both Victoria Police and the community at large.

However, it is self-evident that such a management policy can only succeed in its objective if controllers can be certain that they are receiving accurate advice, from the officers engaged in the pursuit.

Again, it is also self-evident that it is of fundamental importance that information on speed is passed on regularly, and that the data so passed, is accurate.

Recommendation 1

To better support the existing system and to help ensure the accuracy of information passed to the controller, I recommend the ongoing use of existing MDT/GPS technology to identify and to maintain a lasting record of the speeds undertaken by Victoria Police pursuit vehicles, in all future designated pursuits.

Comment 2

It is relevant that in addition to GPS data, a more directly useful data collection should soon be possible through the national digital satellite system, which is under the control of the Australian Communications and Media Authority (ACMA).¹⁴²

As noted in Comment 1 and Recommendation 1, the currently available MDT data collected via the GPS, allows for the recording of data relating to the speed of an in pursuit police vehicle, though not the transfer of this data in real time, to a third party.

¹⁴⁰ I am unaware of the materials currently in use for training police drivers about risk analysis. I have however (post inquest), been made aware of a Department of Justice report entitled Summary Report-Study of vehicle pursuit offenders (2002) by Mr James Charisiou. The report is too extensive to attach to this finding but I would respectfully draw its existence to the attention of interested parties and to Victoria Police in particular. Over and above the materials set out in Attachment 2, the report includes highly relevant information from page 3, concerning the profiles of persons involved in attempts to abscond by vehicle in Australia, which material I consider has a great potential to be helpful to any driver pursuit relevant teaching, about risk analysis.

¹⁴¹ Unknown to him, 615 was in fact travelling at speeds approaching 145 kmph plus, by this point. Further, he had not and did not receive any report concerning speed from either occupant of 615. See the D24 transcript, exhibit 19B.

¹⁴² It is understood that space on this new digital network is likely to become available from sometime in 2014.

The future deployment of the national digital satellite system with the use of data collected through vehicle installed MDT terminals, would however permit the real time recording of both passage and speed, (with a live visual feed of all data to a pursuit controller), of any vehicle being pursued by Victoria Police in a designated vehicle pursuit. By the same operation, this data transfer would also include the passage and speed of the pursuing police vehicle, this to occur on all occasions when an MDT equipped vehicle engages in such a pursuit.

Recommendation 2

To take advantage of this development I recommend that the State of Victoria now seek through the Australian Communications and Media Authority, an allocation of sufficient bandwidth on the national digital satellite system, to allow for the collection of real-time video and location data by Victoria Police.

Such use should be fully independent of other data carriers, telecommunications companies and media companies, and would be needed to support the above-discussed Victoria Police data collection proposal.

Recommendation 3

I also recommend that the State of Victoria, through the Commissioner, further review the need for the additional ancillary equipment, which would also be required.¹⁴³

Recommendation 4

I further recommend, that the same technology be made available and be employed to visually record a police vehicle's passage and speed in all other instances where such vehicle exceeds a specified speed limit, such limit to be set by the Commissioner and to be promulgated in the Victoria Police Manual.

Comment 3

Austrroads represents all Australian states concerning the creation of consistent rules to do with licensing and registration.

New Zealand, which has adopted a similar system to that adopted in Australia, is not a party to the Australian national database, which database allows for ease of checking, when a drivers licence applicant in one state seeks to rely upon the drivers licence earlier obtained in another state.

Under this present system, as it applies to New Zealand, applicants have until recently been permitted to obtain a Victorian licence by the presentation of evidence that a New Zealand licence was issued, coupled with only a supporting statement by the applicant that he/she was not disqualified, in another country.¹⁴⁴

¹⁴³ I note from the Age 30/12 at page 4 that the Deputy Police Commissioner, Mr Kieran Walshe, was recently quoted as stating that the MDT terminals required to send and receive GPS signals are, 'presently installed in about 700 of the 2400 police fleet.' Victoria Police may or may not consider it necessary to have all of its fleet vehicles prepared for the introduction of such a technology.

¹⁴⁴ See the discussion from transcript page 810.

The evidence before me establishes that Shane exploited this system, to obtain a Victorian licence, to which he was not entitled.

It appears likely that his concern that this misconduct would also come to be detected by pursuing officers was a factor that contributed to his decision to drive in the manner, which he then did.

Recommendation 5

I recommend that as per the Court's discussion with the VicRoads manager for registration and licensing policy, both Austroads and VicRoads, review their licence verification systems, as they apply to New Zealand applications for the issue of a (Victorian) licence. Such a review should occur with future arrangements to be designed to allow for the electronic filing and retention in Victoria of both a copy of the applicants current New Zealand licence, together with a supporting letter of verification from the New Zealand Road Traffic Authority.¹⁴⁵

Comment 4

Having regard to what I find to be an unsatisfactory involvement by the Ethical Standards Department, and to the need for the Court to be proactive in protecting and supporting our own investigatory processes,¹⁴⁶ I adopt the final recommendation made by the State Coroner, Her Honour Judge Coate, in her recently published finding in the matter of Tyler Cassidy.

Recommendation 6

"Taking of Police Statements

8 To allay perceptions regarding collusion and bias, without compromising the coherence of the account given by Victoria Police members following a police related death, I recommend that the Secretary to the Victorian Department of Justice provide an institutionally independent, legally trained person to observe the interview process with Victoria Police members involved in the incident."¹⁴⁷

Recommendation 7

It is my further view that such statement taking should take place in a question and answer format immediately following the event the subject of investigation, or as soon as is practicable thereafter.

Recommendation 8

In addition, a police briefing, coupled with earlier witness daybook statements, together with any other relevant materials, should be provided to such an observer by the investigator(s), before such statement taking is commenced.

¹⁴⁵ I note from the VicRoads written submission to the Inquest, that it is suggested that some amendments, which go to supporting the above stated objective, may already have been introduced in Victoria.

¹⁴⁶ See finding paragraphs 224-227

¹⁴⁷ See Coroners Court of Victoria website at Coroners Case finding number 5542 of 2008, at page 128. I would suggest that a panel of suitably qualified and experienced practitioners might be recruited by the Department of Justice, from both the Victorian Bar and the Law Institute of Victoria.

Recommendation 9

Such a process should also allow the observer to express to the statement taker any concerns about the content of the questioning that he or she may have, before the statement taking is brought to a conclusion.¹⁴⁸

Comment 5

Finally, I refer this finding to the Office of the Director of Public Prosecutions in the State of Victoria, pursuant to Section 49 of the Act, so that he might take such action against the occupants of Frankston 615, as he may deem to be appropriate.

Conclusion

Shane Bennett was 19 years of age at the time of his death and had found a career in Australia that was full of promise. He has left behind a family, which has bravely acknowledged his foolishness, while remaining devastated by his loss.

I know that all parties would wish to join me in extending our condolences to family members, both in New Zealand and in Australia.

I direct that a copy of this finding be provided to the following:

The family of Shane Bennett

The Minister for Police in the State of Victoria

The Commissioner for Police in the State of Victoria

The Secretary of the Department of Justice in the State of Victoria

The Director of Public Prosecutions in the State of Victoria

The Commanding Officer, Ethical Standards Department, Victoria Police

The Chief Executive Officer, VicRoads

The Chief Executive Officer, Austroads

The Chief Executive Officer of the Australian Communications and Media Authority

The Chief Executive Officer Motorola Australia

The Chief Executive Officer Trimble Navigation Australia

The Chief Executive Officer the Emergency Services Telecommunications Authority (ESTA)

The Chairperson of the Bar Council¹⁴⁹

The Chairperson of the Law Institute¹⁵⁰

Detective Sergeant Torcasio

Sergeant Whitechurch

Leading Senior Constable Bednarczyk

Senior Constable Orr

Constable Morgan

Inspector Mick Talbot, MCIU.

The Manager, Coroners Prevention Unit, (Attention Lyndal Bugeja and Jeremy Dwyer).

¹⁴⁸ Such an approach should be applied conservatively, to include all pursuit cases resulting in accident, where death and/or serious injury, is suspected to have occurred.

¹⁴⁹ Recommendation 6 and footnote 147 refer.

¹⁵⁰ As above

Counsel assisting the Coroner, Mr T Burns of Counsel, on the instructions of Meridian Lawyers, (Mr T Katz).

Counsel for the Commissioner of Police, Mr P Lawrie of Counsel, on the instructions of Victoria Police, Civil Litigation.

Counsel for Sergeant Whitehead, LS/C Bednarczyk, S/C Orr and C Morgan, Mr R Gipp of Counsel, on the instructions of the Victorian Government Solicitor.

Counsel for Motorola Solutions, Mr R Taylor of Counsel, on the instructions of DLA Piper.

Counsel for VicRoads, Mr A Lewis of Counsel, on the instructions of Lander and Rodgers.

Counsel for Trimble Navigation Australia, Mr S Russell and Mr O'Neill of Counsel.

Counsel for Emergency Services Telecommunications Authority (ESTA), Mr P Rozens and Mr Southey of Counsel on the instructions of Gadens, Lawyers.

Counsel for the Herald and Weekly Times, Mr Cashen of Counsel, on the instructions of Kelly Hazell Quill, Lawyers

Signature:

A handwritten signature in cursive script that reads "Peter White". The signature is written in black ink and is positioned above a horizontal line.

PETER WHITE
CORONER

23 March, 2012