



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2017 4768

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 63(1)*

*Section 67 of the Coroners Act 2008*

Deceased:	Jacqueline Isabella VODDEN
Delivered on:	14 March 2023
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank
Hearing dates:	8, 9, 10 and 11 February 2022 (inquest) 13 April 2022 (submissions hearing)
Findings of:	Coroner Sarah Gebert
Counsel assisting the Coroner:	R. Singleton instructed by Mr Lindsay Spence of the Coroners Court of Victoria
Counsel for the Chief Commissioner of Police	P. Lawrie instructed by Ms Jessica Tribe of the Victorian Government Solicitors Office

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## INTRODUCTION

1. Jacqueline Isabella Vodden was born on 5 May 2001 and was 16 years old at the time of her passing. She is the daughter of Scott and Naomi Vodden and had two younger sisters, [REDACTED] and [REDACTED].
2. Jacqueline was staying with her best friend Jasmyn in the week prior to her passing by arrangement with her parents and Jasmyn's mother.
3. Tragically, Jacqueline passed away on 19 September 2017, after a van in which she was a front seat passenger, collided with a truck on the Western Freeway in Ballan. The van was stolen and was being pursued by police at the time of the fatal collision. The 17 year old driver of the van, Dale Cairns<sup>1</sup>, was a friend<sup>2</sup> of Jacqueline and was known to police.

## THE CORONIAL INVESTIGATION

4. Jacqueline's passing was reported to the Coroners Court as it fell within the definition of a reportable death in the *Coroners Act 2008 (Vic)* (**the Act**) because her death appeared to have been unexpected, unnatural or violent or to have resulted from accident or injury.<sup>3</sup>
5. The coronial investigation was suspended pending the resolution of criminal proceedings involving Mr Cairns.
6. Mr Cairns was unlicensed and had a substantial history of prior criminal offences. He pleaded guilty to one charge of culpable driving causing death, as well as a number of associated offences which included dangerous driving, failing to stop and failing to render assistance.
7. On 11 May 2018, Mr Cairns was sentenced in the County Court to eight years' imprisonment, with a non-parole period of five years<sup>4</sup>, which was reduced on appeal on 7 December 2018 to six years' imprisonment, with a non-parole period of 4 years.<sup>5</sup>
8. Following completion of the criminal proceedings, the coronial investigation resumed under the Act.

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<sup>1</sup> His identity is the subject of a pseudonym order.

<sup>2</sup> For clarification, Jacqueline and Dale Cairn were not in a romantic relationship.

<sup>3</sup> Deputy State Coroner Caitlin English (as she then was) initially had carriage of the investigation.

<sup>4</sup> *DPP v Cairns (a pseudonym)*, [2018] VCC 662.

<sup>5</sup> *Dale Cairns (Pseudonym) v The Queen*, [2018] VSCA 333.

## The coronial role

9. Coroners independently investigate reportable deaths to find, if possible, identity, cause of death and the surrounding circumstances of the death. Cause of death in this context is accepted to mean the medical cause or mechanism of death. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death.
10. Under the Act, coroners have an additional role to reduce the number of preventable deaths and promote public health and safety by their findings and by making comments and or recommendations about any matter connected to the death they are investigating.
11. When a coroner examines the circumstances in which a person died, it is to determine causal factors and identify any systemic failures with a view to preventing, if possible, deaths from occurring in similar circumstances in the future.
12. In the coronial jurisdiction, the standard of proof applicable to findings is the balance of probabilities.<sup>6</sup>

## Mandatory inquest

13. As Jacqueline's death occurred while police were pursuing the vehicle she was a passenger in and, the evidence suggests that the vehicle was being pursued for the purpose of arresting all the occupants, I regard Jacqueline as a *person placed in custody or care* at the time of her passing.<sup>7</sup> In these circumstances, an inquest was mandatory under s52(2)(b) of the Act.
14. The central focus of the inquest was whether the actions of police were appropriate in the time proximate to her death. The inquest scope was as follows:
  - (a) The factual circumstances and appropriateness of the decision by Ballarat 528 to follow the vehicle driven by Mr Cairns and attempt to intercept it;

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<sup>6</sup> Subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

*"The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences ..."*. (pages 362-363)

<sup>7</sup> (j) provides: "*person who a police officer ...is attempting to take into custody or who is dying from injuries sustained when a police officer ...attempted to take the person into custody*".

- (b) the factual circumstances and appropriateness of the decision by Ballarat 528 to commence a pursuit of the vehicle driven by Mr Cairns, and whether that decision to commence the pursuit complied with Victoria Police policy and procedures at the time of the incident;
- (c) whether the pursuit was conducted in compliance with pursuit policy; and
- (d) whether the fact that the pursuit was not terminated before the fatal collision was in compliance with the pursuit policy.

### **Victorian Charter of Human Rights and Responsibilities**

15. Section 9 of the *Charter of Human Rights and Responsibilities Act 2006* states that “[e]very person has the right to life and has the right not to be arbitrarily deprived of life”. This obligation to protect life has been interpreted as a procedural requirement that authorities effectively investigate deaths that occur in certain circumstances, including where a person has died in custody.
16. In this case, Victoria Police assigned Detective Sergeant Christian Von Tunk (**DS Von Tunk**) from the Major Collision Investigation Unit to be the Coroner’s Investigator. DS Von Tunk’s investigation was oversights by the Professional Standards Command (**PSC**) in accordance with relevant Victoria Police oversight principles.<sup>8</sup>
17. The four police officers in the pursuit vehicle were separated following the incident, following which their statements were taken in the presence of a member from PSC.
18. The driver of the pursuit vehicle was subject to blood sample testing pursuant to section 55(b)(a) of the *Road Safety Act 1986*, within three hours of the collision, which did not detect any alcohol or illicit drugs in his system. Each of the other police members involved underwent Critical Incident testing in accordance with the *Victoria Police Act 2013* and no adverse results were reported.
19. Counsel Assisting, Ms Rose Singleton is an independent member of the Victorian Bar. She was instructed by Mr Lindsay Spence from the Coroners Court’s In-House Legal Service.

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<sup>8</sup> Detective Sergeant Jason O’Connell statement dated 9 December 2019 set out compliance with the oversight principles.

20. I note that whilst a member of Victoria Police compiled investigative material on my behalf, the Court also undertook additional investigations and ultimately, I determined the scope of the inquest and which witnesses should be called to give evidence at the inquest pursuant to section 64 of the Act.

### Sources of evidence

21. As part of the coronial investigation, DS Von Tunk prepared a comprehensive coronial brief. The brief comprises statements from witnesses including Jacqueline's family and friends, the police involved in the pursuit, witnesses to the pursuit, the forensic pathologist who examined Jacqueline, ambulance paramedics, investigating police including an accident reconstructionist, as well as other documentation such as photographs, maps, CCTV footage, and recordings of police communication during the pursuit.
22. The police pursuit vehicle was not fitted with a Mobile Data Terminal (**MDT**)<sup>9</sup> or an In Car Video (**ICV**) but instead was fitted with a standalone Garmin Global Positioning System (**GPS**) on the dashboard from which limited data could be derived.
23. DS Von Tunk stated in relation to the police vehicle,
- The vehicle is commonly described as being unmarked, where covert Light Emitting Diodes (L.E.D) lights flashing alternate red and blue are fitted to the front and rear. This is also linked to the vehicles headlights and reversing lights, which flash alternatively. A siren is also fitted within the vehicle, under the bonnet or within the front guard area. To activate the lights and siren, a singular switch, centrally mounted in the vehicle forward of the gearstick is fitted. This switch can be activated by the driver or front seat passenger.*<sup>10</sup>
24. A video of the movement of the police pursuit vehicle was prepared by Acting Sergeant, Michael Goodman and formed part of the evidence (D24 Reference Map Audio Overlay – referred to as **D24 overlay video**).<sup>11</sup> This video showed the movement of the police vehicle

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<sup>9</sup> The MDT is a touch screen computer in a police vehicle that can access information quickly (such as LEAP information). Additionally, all MDTs are inbuilt with GPS systems.

<sup>10</sup> Statement of Von Tunk dated 7 July 2018.

<sup>11</sup> Exhibit F

during the pursuit and was overlaid with the audio from police communications which were broadcast during the pursuit.<sup>12</sup>

25. It became uncontroversial that the police followed the van in which Jacqueline was a passenger along the following route in Ballan (see map at paragraph 25):

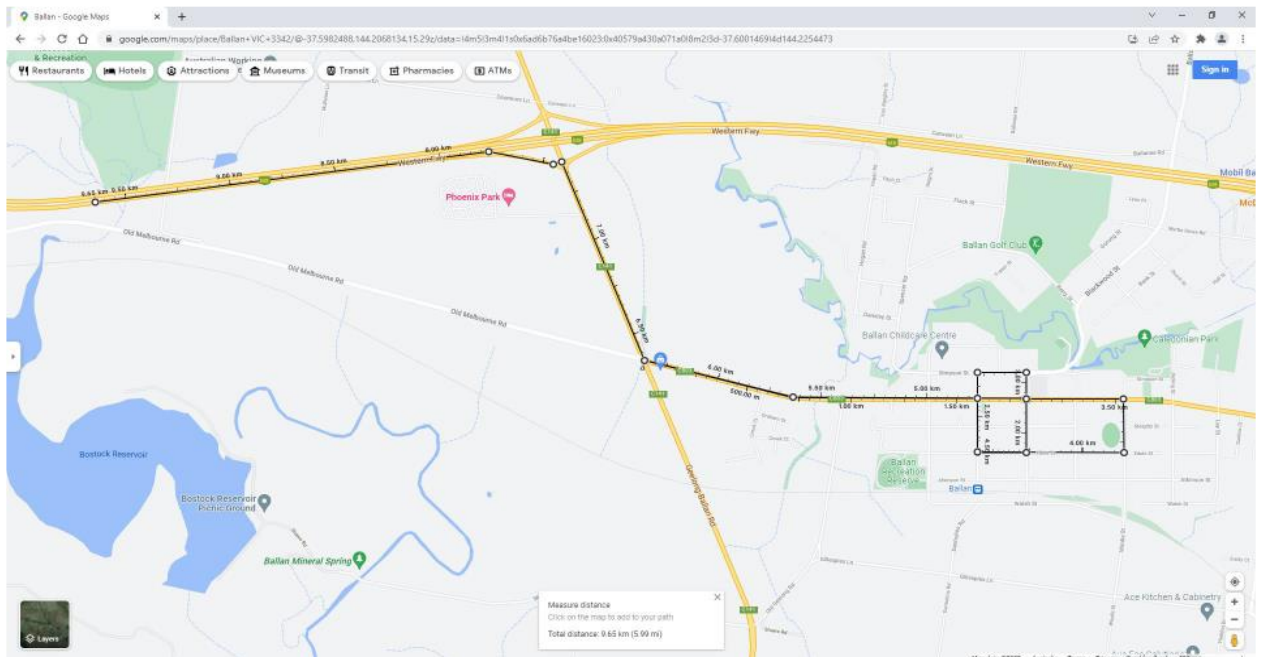
- Right at the intersection of Geelong-Ballan Road and Old Melbourne Road, which is also referred to as Inglis Street;
- East along Inglis Street through the township of Ballan turning right at Stead Street;
- South along Stead Street turning right at Edols Steet;
- West along Edols Street turning right at Fisken Street;
- North along Fisken Street (crossing Inglis Street) turning right at Simpson Street;
- East along Simpson Street turning right at Stead Street;
- South along Stead Street turning left at Inglis Street;
- East on Inglis Street turning right at Windle Street;
- South on Windle Street turning right Edols Street;
- West on Edols Street turning right at Fisken Street;
- North on Fisken Street turning left at Inglis Street; and
- West along Inglis Street turning right at Geelong-Ballan Road and then onto the Western Freeway towards Ballarat where the fatal collision occurred.

26. The area covered by the vehicles is represented on the map below<sup>13</sup>.

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<sup>12</sup> The D24 overlay video was accepted as generally accurate save for an error identified in the map around the five minute 20 second mark that showed the police travelling over an overpass and entering the freeway the wrong way, which was inaccurate.

<sup>13</sup> Exhibit P.



27. CCTV footage was also obtained by police at various locations commencing where the police first observed the offending vehicle on Geelong-Ballan Road, Ballan until the collision on the Western Freeway. CCTV footage obtained included Crossroads Trading, Ballan Post Office and dashcam from a vehicle travelling on the Western Freeway. A compilation of this footage was made available to assist with the investigation.<sup>14</sup>
28. The inquest ran for four days and heard evidence from seven witnesses. They were:
- (a) Lawrence Perks;
  - (b) Kane Davies;
  - (c) Scott McCallum;
  - (d) Senior Constable Rory Meddick (**SC Meddick**);
  - (e) Detective Senior Constable Sian Millar<sup>15</sup> (**DSC Sian Millar**);
  - (f) Detective Senior Constable Allira Cudia<sup>16</sup> (**DSC Cudia**); and
  - (g) Inspector Brendon McCrory (**Inspector McCrory**).

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<sup>14</sup> Exhibit N.

<sup>15</sup> Who held the rank of Senior Constable at the time of the incident.

<sup>16</sup> Who held the rank of Senior Constable at the time of the incident.



29. Prior to the conduct of the inquest, I received an application from Senior Constable Carey Heap (**SC Heap**) who was the driver of the pursuit vehicle<sup>17</sup>, asking that he be excused from giving evidence on the basis of medical grounds. Following consideration of the application and supporting documentation, I was satisfied that the giving of his evidence would be so injurious to his health that it was appropriate and necessary for me to make a direction that he be excused, noting that there was no alternate way to mitigate the risks of harm. Whilst it was not ideal given his role in the pursuit, I noted that he had made a statement to the court and there was other evidence I could rely on, including civilian witnesses and the other police occupants of the vehicle who were giving evidence at the inquest, as well as audio recordings and CCTV footage.
30. Following the inquest, I also heard oral submissions from Counsel Assisting and Counsel for Chief Commissioner of Police (**CCP**), who also provided written submissions.
31. This finding is based on the entirety of the investigative material comprising of the coronial brief of evidence including material obtained after the provision of the brief, the statements and testimony of those witnesses who gave evidence at the inquest and any documents tendered through them, any documents tendered through counsel (including Counsel Assisting), oral and written submissions following the conclusion of the inquest. All this material, together with the inquest transcript, will remain on the coronial file and comprises my investigation into Jacqueline Voddens's death. I do not purport to summarise all the material and evidence in this finding, but will refer to it only in such detail as is relevant to comply with my statutory obligations and necessary for narrative clarity.

## **RELEVANT BACKGROUND**

### **Dale Cairns**

32. Jacqueline developed an association with Mr Cairns in the months leading up to the collision.
33. According to her best friend Jasmyn, Jacqueline was spending a lot of time with Mr Cairns from around August 2017 onwards, which included *sneaking out at night and going for*

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<sup>17</sup> SC Heap had been summoned to give evidence.

*drives in cars.*<sup>18</sup> Jacqueline had described him to Jasmyn as *a cocky driver [who] thought he was in control, but he wasn't.*

34. Mr Cairns did not hold a drivers licence and had an extensive criminal history in the Children's Court.
35. Mr Cairns had been linked by police to a series of burglary and theft-related offences in the wider Ballarat area. On 11 August 2017 he was granted bail with residence and curfew conditions. The Ballarat Divisional Response Unit (**BDRU**) were actively monitoring his bail compliance however, sometime around late August 2017 he had no home address and could not be located by police.
36. Around 1 September 2017, BDRU commenced Operation Streusel in relation to Mr Cairns' criminal activities and whereabouts. SC Heap was one of the three police members involved in Operation Streusel. He was also the nominated informant for a series of offences identified as committed by Mr Cairns. It is apparent that there were a number of unsuccessful attempts to locate Mr Cairns in the weeks leading up to 19 September 2017, and he continued to elude police.
37. Mr Cairns was also linked to a number of instances of dangerous driving in stolen vehicles in the weeks leading up to the fatal collision.
38. One of those incidents occurred on 9 September 2017 when a stolen Ford Falcon driven by Mr Cairns collided with a power pole in Lake Wendouree. Mr Cairns and a female were observed by a witness running from the vehicle following the collision.
39. Later that day Jacqueline told Jasmyn that she and Mr Cairns had been involved in this car accident. She was observed by Jasmyn and Jasmyn's mother to have facial injuries, and she complained of pain in her hip.
40. Another incident occurred on 17 September 2017, where Mr Cairns was linked to a stolen vehicle which was observed by police driving on the wrong side of the road, with no lights and at high speed. The police car that observed the vehicle was forced to take evasive action so as not to be hit by the vehicle.

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<sup>18</sup> Statement of Jasmyn [REDACTED] dated 28 November 2017.

41. The evidence suggests that sometime between 6 and 17 September 2017 Mr Cairns took possession of a white 2015 Toyota HiAce van (**the HiAce van**) that was ultimately involved in the fatal collision. That HiAce van had been stolen from a Daylesford address between 2 and 4 September 2017.
42. At around 11.15pm on 17 September 2017 number plates (which displayed 1KL 8CQ) were stolen from a parked vehicle outside a private address in Belmont, and those stolen plates were subsequently fitted to the HiAce van.
43. Mr Cairns had been bailed to appear at the Ballarat Children's Court on 18 September 2017 but failed to appear on that date.

### **CIRCUMSTANCES OF DEATH**

44. At around 1.00pm on 19 September 2017 Jacqueline had a conversation with Jasmyn's mother at the home she was staying. Shortly after, Jacqueline left the property without saying where she was going. It is evident that she later met up with Mr Cairns who was driving the HiAce van with registration 1KL 8CQ.
45. At approximately 1.15pm a male was disturbed following entry to an open garage at an address in Nerinna after which he immediately left in a white van. The incident report later noted,  
  
*Victims garage was open with a car locked inside. Access door between garage & house closed but unlocked. Victim was home & her teenage daughter was also present. Vict saw a white van pull up outside her address. She initially thought it was a delivery van, then saw a male walk up the driveway, she went onto the balcony & yelled out to the male who entered garage, vict yelled again disturbing male who ran off to the van and took off. No apparent disturbance in garage....*<sup>19</sup>
46. At a similar time, SCs Heap, Meddick, Millar, and Cudia (all in plain clothes), left the Ballarat police station to patrol the area in an attempt to locate Mr Cairns. Their call sign was Ballarat 528 and their vehicle was an unmarked silver class Holden (**the police vehicle**) which was fitted with lights and sirens.

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<sup>19</sup> Incident Fact Sheet, Incident Number: VP-2017-019096

47. SC Heap was driving and SC Meddick was the front passenger, with SCs Millar and Cudia seated in the rear. SC Heap held an approved driving authority which permitted him to drive a silver class vehicle up to a speed of 150 kmh.

48. Shortly after 1.30 pm, information was communicated over the police D24 radio that a male had approached an open garage at a house in Nerrina, but after being disturbed by the resident of the house, had fled the scene in a white Toyota HiAce.

49. Police radio communications record the following in relation to this incident,

*Two males in a vehicle pulled up outside complainants house. Passenger got out of the vehicle ..ran up to the drive way to an open garage door .. the complainant went outside .. the male ran away .. they've decamped in the vehicle it's a white Toyota van HiAce or similar<sup>20</sup>*

....

*That will be the sus vehicle from up Ballarat north .. we have confirmed it's a stolen vehicle from Melbourne ... so be on the look out for that<sup>21</sup>*

....

*Sus vehicle believed to be the one that the north van had earlier stolen from Melbourne. Two male passengers .. one got out of the vehicle .. ran to the complainants garage .. complainant came outside .. they ran away and drove off .. white Toyota HiAce .. the Complainant couldn't give us a rego .. male sighted was wearing runners shorts cap on backwards ..skinny built Caucasian .. about 20 to 25 years of age<sup>22</sup>*

50. Ballarat 528 came up on the police radio just after 1.39pm and sought information about the Nerrina incident (*was there a job around Doodts Road with a sus loiter?*), at which time the D24 operator confirmed that the job involved a white Toyota HiAce, stolen number plates with registration number 1KL 8CQ and that a male approached an open garage but didn't realise that the occupants were home. Ballarat 528 advised the operator to mark them on route to the job and, that they were only a few minutes away.

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<sup>20</sup> Commences at ~1.28, Exhibit , D24 operator in response to North 309.

<sup>21</sup> Communicated by North 309

<sup>22</sup> Communicated by D24 operator to Ballarat 219.

51. SC Cudia said that she received photos of the HiAce van whilst in the police vehicle.
52. SC Millar stated,
- At some point [SC Cudia] phoned a member on the van and spoke to them about what had occurred. [SC Cudia] told us that the van was there so we didn't need to attend the burglary. She was also advised that the victims of the burglary had taken photos of the van involved in the burglary and these were forwarded to us. I believe at this time Sergeant Daniel YORK forwarded me the same photo that [SC Cudia] had received and I think this also went to [SC Meddick] and [SC Heap]. At some point a member at the scene came up and advised that it wasn't just stolen plates that the van was also stolen.*
53. SC Cudia later stated that she thought the van had been involved in a *home invasion* rather than an attempted aggravated burglary. SC Millar also later stated that she thought the van may have also been involved in a couple of burglaries that morning.
54. Ballarat 528 patrolled for a short time looking for the white van.
55. SC Meddick said it was his usual practice at that time to formulate a plan ahead of going out to commence patrol for a stolen vehicle, as to what they might do if they came across it, but he couldn't remember whether they did so, given the passage of time.
56. After receiving information that Mr Cairns may be in the Ballan area, Ballarat 528 stopped looking for the white van. They drove to Ballan where they positioned themselves at about 2.10 pm approximately one kilometre south to a premise of interest related to Mr Cairns' location. The police vehicle stopped on the side of the road facing in a southerly direction. The members in the vehicle said that they discussed possible strategies for approaching the premises.
57. According to CCTV footage which showed the police vehicle at that time, no more than a few seconds elapsed after they parked, when a white Toyota HiAce van be seen driving towards them, in the direction of the Geelong-Ballan and Old Melbourne Road intersection. Occupants of the police vehicle observed that the registration matched the registration of the van involved in the Nerrina incident as broadcast over the radio.
58. The police vehicle immediately performed a U-turn and commenced following the HiAce van. Upon first sighting the vehicle SC Heap stated,

*As it got closer S/C MEDDICK noticed the registration and mentioned that it matched the registration of the Toyota van that had left the burglary in Ballarat North. As it came closer I also saw the registration and saw that it was the same vehicle that had been broadcast earlier. I knew this vehicle to be stolen and it was linked to the aggravated burglary that had occurred earlier in Ballarat.*<sup>23</sup>

59. SC Meddick stated that he saw that the driver was a male and there may have been a passenger, but he could not identify whether the person was male or female.

60. SC Heap stated that he activated *the lights and siren* and *proceeded to follow the Toyota van* for the purpose of intercepting and arresting the occupants. He said that he suspected that Mr Cairns may have been an occupant of the vehicle but this was a *suspicion only*. He was *unable to identify the driver or passenger, or if in fact there were any passengers*.

61. The CCTV footage shows that as soon as Ballarat 528 performed the U-turn to follow the HiAce van, the police vehicle's flashing L.E.D lights started operating. SC Meddick thought that SC Heap is likely to have turned the lights on.

62. The HiAce van was observed to turn right onto Old Melbourne Road but as it did so it travelled to the incorrect side of the road, south of the traffic island at the intersection, and turned into the left turn lane for westbound traffic on Old Melbourne Road. SC Meddick stated, *It was fortunate that no cars came at the time as he would have hit them head on*.

63. SC Heap stated that while following the HiAce van along Old Melbourne Road (Inglis Road) he tried to draw closer to the vehicle (and could do so after about 500 metres) *to ensure the driver was aware of the Police vehicle*. He said that he believed at this point the driver of HiAce van was aware the police vehicle was behind it and was attempting to intercept. He stated,

*I had got closer to the van I flashed my high beams and sounded the car horn, together with the continued [use] of the flashing blue/red lights and the siren. The van continued without stopping.*

*I now believed that I was actively in pursuit of this vehicle. I am aware of the Victoria Police pursuit policy and was continually assessing the risks of doing so, I informed my*

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<sup>23</sup> Statement of SC Heap dated 26 September 2017.

*passengers I was in pursuit and considered their safety and ensured they were aware that at any time anyone of them could terminate the pursuit by informing me to do so.*

64. SC Heap stated that SC Meddick, as observer, *called in the pursuit on the Police radio* at this time, which is not consistent with the weight of the evidence which establishes that the pursuit was called in the township of Ballan. It was not possible however to clarify this inconsistency with SC Heap at inquest.<sup>24</sup>

65. Prior to entering the township of Ballan SC Heap stated his risk assessment included that the HiAce van *was not travelling at an excessive speed, it was in my estimate, travelling only slightly over the 80 km/h speed limit. I also noted there were very few vehicles around at that stage.*

66. The evidence suggests that Mr Cairns (as later identified) was likely to have been aware of the presence of the police vehicle and its attempt to intercept at an early stage and at least before the township of Ballan. I note that the police vehicle immediately performed a U-turn and activated their lights upon sighting the HiAce van near Crossroads Trading following which sirens were activated before the township of Ballan. These activities all took place on relatively quiet roads with little traffic. In addition, given the recent offending behaviour involving the HiAce van (where a witness made her presence known), the driver would likely have been aware that an immediate police response would have been activated in the local area.

67. SC Heap stated the following in relation to his justification for initiating the pursuit,

*My initial intention in relation to this vehicle was to intercept and arrest the occupants in relation to the stolen vehicle and the alleged aggravated burglary in Ballarat.*

.....

*The initial intention was to intercept the vehicle as it was believed to be stolen and the occupants believed to have been involved in an aggravated burglary. It was intended to arrest and identify the occupants in the van.*

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<sup>24</sup> SC Heap also stated that as the HiAce van executed the right hand turn at the intersection of the Geelong-Ballan and Old Melbourne Road (which is an earlier time) he *chose to actively pursue* the van as he considered that it was not a *risk to other road users* noting the road conditions, the amount of traffic and the speed of the HiAce van. Again it was not possible to clarify this inconsistency with SC Heap at inquest.

68. SC Heap stated that as the HiAce van entered the township of Ballan it *slowed down quite a bit* noting that there was traffic in front of it and it had also travelled over speed humps. Whilst travelling along the main street in Ballan he thought the speed of the HiAce van was at most, a little quicker than the sign-posted 50kmh speed limit but *it never travelled at a speed that I would have considered to be dangerous*. He did however consider that the HiAce van was driving *a bit erratically in that he was slowing down then speeding up then slowing down over and over*. He stated, *It was appearing that he was trying to cause the Police vehicle [to collide] into the rear of the van*.
69. SC Cudia stated that there was not much traffic around and as the *van was constantly accelerating and then breaking ...I thought the driver was going to stop and run from the van*. At one stage she removed her seat belt in preparation for a foot pursuit.
70. SC Heap was not familiar with the township of Ballan but SC Meddick was. SC Meddick stated that the speedometer in the police vehicle was not clearly visible to him but he relied on the GPS for the speed of their vehicle and *sometimes to look at the streets*.<sup>25</sup>
71. Statements provided from the other members of Ballarat 528 indicate that they considered they were in pursuit of the HiAce van by the time it entered the main township area of Ballan around the intersection of Inglis Street and Cowie Street.
72. Witnesses in the area at that time included Lawrence Perks and Kane Davies who observed the two vehicles drive past the intersection of Inglis Street and Cowie Street where they were working.
73. They provided statements that estimate that the speed of the HiAce van was at least 100 kmh at this point, *definitely in the range of 100 to 120*.<sup>26</sup> Mr Perks said that he was standing on the south west corner of the intersection, about 10 metres back from the road, when he heard sounds of a siren. He stated,
- At this time I heard the sound of sirens so I walked towards the road and as I got close to the road I saw a white Toyota Hiace van travelling east along Inglis Street towards Cowie Street. As I got to the road the white Hiace van was about 50 metres back from the intersection. As the Hiace van went through the intersection it overtook a car and the Hiace*

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<sup>25</sup> Statement of SC Meddick dated 20 September 2017.

<sup>26</sup> T 28 L 7-8



*van was on the wrong side of the road as it passed, where I was standing on the footpath. The car that was being overtaken actually came to a stop just after it was overtaken and was stopped just west of Cowie Street.*

*The white Hiace van was on the wrong side of the road as it came passed where I was standing so it was in the lane closest to me and travelling east in the west bound lane. I remember he was going at a minimum of 100 km/h.<sup>27</sup>*

74. Mr Perks worked in traffic management and said *I believe I am pretty good at judging speeds* although conceded at inquest he may not have been accurate. The permitted speed along Inglis Street was 50 kmh.
75. Similarly, Mr Davies stated, *I saw a white Toyota Hiace drive through the Inglis/Cowie Street intersection at a fast speed. It was going east in towards the centre of town. It looked to me like it was travelling at least 100km/h. Because I was standing side on its hard to be exact but that's the speed I would estimate it to be going.<sup>28</sup>*
76. At inquest Mr Davies said, ... *the HiAce driving was dangerous. It was – it was in and out on different sides of the road up the main street.....<sup>29</sup>*
77. Both Mr Perks and Mr Davies considered that the town wasn't very busy at that time of day (*it wasn't busy at all, really<sup>30</sup>*).
78. Forensic Officer, Bryson Shearwood<sup>31</sup> provided some advice in relation to the speed of the HiAce van along Inglis Steet by examining CCTV camera footage. I note that his advice was consistent with the civilian witnesses' estimation. He said that the camera located at 125 Inglis Street, Australia Post Office (about 320 metres from the Cowie and Inglis Street intersection between Fiskin and Stead Street within a 19 metre frame of vision) was considered almost perpendicular to the road and provided *sufficient field of view* for his analysis. He calculated that at 3.4.39 (allowing for the most conservative estimate):
- the HiAce van was travelling at an average speed of 99.96 kmh (the highest estimate was 112.46kmh);

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<sup>27</sup> Statement of Lawrence Perks dated 4 October 2017.

<sup>28</sup> Statement of Kane Davies dated 4 October 2017.

<sup>29</sup> T 29 L 22-24

<sup>30</sup> T 60 L 22-23

<sup>31</sup> Attached to the Audio Visual Unit of the Victoria Police Forensic Services Department.

- the police vehicle was travelling at an average speed of 85.68 kmh (the highest estimate was 94.70 kmh); and
- other vehicles passing the camera immediately prior to or after the above vehicle were travelling between approximately 20 kmh and 44 kmh, with an average of approximately 32 kmh.<sup>32</sup>

79. The HiAce van continued to travel east down Inglis Steet, and as it approached the intersection with Stead Street, it was observed by a number of witnesses, including SC Heap, to cross onto the incorrect side of the road, through the roundabout and turn right into Stead Street causing a truck entering the roundabout from the left to apply hard braking to avoid an impact with the HiAce van. Mr Perks stated, *I remember seeing a truck enter the roundabout travelling south and this truck had to stop to avoid a collision.*

80. SC Heap said however that apart from the truck there was no other vehicles in the area and during the turn the HiAce van performed it at a slow speed, so he *again believed* the pursuit at that stage *not to be a risk to other road users.*

81. SC Meddick said of the incident at the roundabout,

*I wouldn't say that they were – it was a near-collision. But it was one that – it could have been a collision if the truck hadn't have seen, ..., the intentions of the van and hit the brakes and come to a stop.*<sup>33</sup>

82. Mr Perks considered, *The whole of this guys driving was really dangerous going down the main street (Inglis Street).* And further at inquest in response to whether there was anything particularly dangerous about the HiAce van's driving he said,

*No, just the speed – just the speed, travelling through the main street of town. I mean, there's a couple of pedestrian crossings and speed humps through there. That's where all the shops are, and the supermarket. So that was probably more – the dangerous point was just the speed, let alone – ....., probably the aggression, showing – weaving – weaving and driving up the wrong side of road occasionally.*<sup>34</sup>

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<sup>32</sup> Statement of Bryan Shearwood dated 16 March 2021.

<sup>33</sup> P198 15-19

<sup>34</sup> T 32 L 11-19

83. Ballarat 528 followed the HiAce van around the intersection of Inglis and Stead Street (on the correct side of the roundabout) and about 1 minute and 40 seconds after the police vehicle started following the HiAce van whilst travelling south on Stead Street before Streiglitz Street, the police made their first radio transmission. Both vehicles continued to travel south on Stead Street and then through a number of back streets in the Ballan township. The path of travel was south along Stead Street with a right turn at Edols Steet, west along Edols Street with a right turn at Fisken Street and north along Fisken Street through the intersection with Inglis Street towards Simpson Street.
84. At around 2.14 pm, SC Meddick broadcast over the police radio that Ballarat 528 was in pursuit, and some 16 seconds later when prompted by the operator, he advised that their location was Edols Street turning right onto Fisken Street towards Inglis Street and broadcast that the *vehicle is a stolen Toyota HiAce IKL-8CQ*.
85. SC Heap said of this part of the pursuit that at one unnamed intersection the HiAce van slowed at a give way sign, at another intersection the vehicle indicated to turn left and then quickly turned right. He stated that he sighted no other traffic on the back streets and the vehicle was being driven *very close to the speed limit*. He further stated that at no time did the driver *drive erratically* and the HiAce van seemed to be a slow vehicle with limited power. He said that he followed the vehicle at a safe distance with the lights and sirens still active.
86. Mr Perks said when he later observed the HiAce van cross the intersection of Inglis and Fisken Street travelling north toward Simpson Street, *the Hiace van came north along Fisken St which to the east of where I was still standing. The van was still flying along Fisken Street and crossed Inglis Street and continued north.*
87. Once the HiAce van crossed to the northern side of Inglis Street the pursuit continued further through the back streets of the township. The HiAce van travelled north on Fisken Street then right into Simpson Street; east along Simpson Street then right into Stead Street (it was around this time that SC Meddick thought he could identify that the passenger was female and *was situated behind the front passengers*); south along Stead Street then left into Inglis Street; east on Inglis Street then right into Windle Street; south on Windle Street then right into Edols Street; west along Edols Street then right into Fisken Street; and north on Fisken Street finally left into Inglis Street to travel west out of the township.

88. Following two requests from the D24 operator which occurred while the police vehicle was travelling north on Fisken Street between Inglis Street and Simpson Street, and then east on Simpson Street<sup>35</sup>, Inspector McCrory, with callsign Bacchus Marsh 142, identified himself over the radio as the Pursuit Controller. He immediately asked for the reason for the pursuit. This occurred when the police vehicle was travelling east along Simpson Street<sup>36</sup>.
89. Inspector McCrory was informed by the D24 operator, *stolen HiAce been scouting addresses in Ballarat* and asks Ballarat 528 to update their location.
90. SC Meddick also responds while the police vehicle was travelling east on Inglis Street (on the second occasion)<sup>37</sup> and reports that the reason for pursuit is *drive in a manner dangerous*.
91. At 1 minute 11 seconds into the pursuit transmission, and while the police vehicle was travelling south along Windle Street<sup>38</sup>, the Pursuit Controller asks for the *mindset and reason for pursuit at the start*, and is advised by the D24 operator, *dangerous driving* according to Ballarat 528.
92. Inspector McCrory stated,
- My initial risk assessment of the event was assisted as I am very familiar with the Ballan area and I was immediately aware of where the police and offending vehicle were driving. My first directions as 'pursuit controller' was to enquire as to the reason for initiating the pursuit.*
- Once I had received confirmation, I began to communicate resolution strategies which included the use of 'stop sticks' and additional units moving down Ballarat to assist To Assist with my risk assessments of the event, I enquired into the speed of the offending vehicle, other road users and the manner in which the offending vehicle was being driven. I received radio communicated responses to each of my enquiries.*<sup>39</sup>

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<sup>35</sup> According to D24 overlay video.

<sup>36</sup> According to D24 overlay video.

<sup>37</sup> According to D24 overlay video.

<sup>38</sup> According to D24 overlay video.

<sup>39</sup> Statement of Inspector McCrory dated 30 October 2020.

93. While the police vehicle was travelling west along Edols Street (on the second occasion)<sup>40</sup>, Ballarat 528 were requested to update their location and responded with, *east on Edols Street towards Duncan Street*. Shortly following this, Inspector McCrory enquired about the availability of Moorabool Highway Patrol, and approved the deployment of stop sticks.
94. While the police vehicle was travelling north along Fiskin Street towards Inglis Street (on the second occasion)<sup>41</sup>, Ballarat 528 were requested to update their location and respond with, *he's just gone south on – sorry, west on Inglis Street towards the main drag*. The Pursuit Controller asks for speed and stop sticks at Stead and Inglis Street.
95. SC Heap stated, *I continually assessed the risk of continuing the pursuit. Again I deemed it to be safe. There was little other traffic around and the van was not driving at a speed or in a manner that was dangerous to other roads users.*
96. SC Meddick said that as he *drove around these streets in Ballan I can only estimate he varied his speed from around 60 to 70 kilometres per hour.*
97. Mr Davies made the following observations of when the HiAce van travelled west along Inglis Street on the way out of town,
- As I got closer to Inglis Street, maybe 10 metres away, I looked east up Inglis Street and I saw the Toyota van speeding towards me, heading west on Inglis Street.*
- This time I would estimate the speed of the van at 100-120km/h. It was flying. As it drove towards me I saw a young boy in the driver's seat. He was only small in size. I also saw that there was a girl with long hair seated in the passenger seat.*
- I noticed them because as the van went over a speed hump in Inglis Street I saw both of them lurch forward. It looked to me like the girls head hit the windscreen and her hair went flying around her head. It looked like neither of them had a seat belt on.*
98. In contrast, SC Meddick said at inquest,
- I don't believe that they were exceeding the speed of 100 kilometres an hour at that stage. ..., the capabilities of the HiAce van, ....., I don't think that they would have been able to*

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<sup>40</sup> According to the video overlay.

<sup>41</sup> According to the video overlay.

*accelerate that much, coming from, ....., was it Fisken Street that they've come out of? Back into Inglis Street. ...., and negotiating the speed hump. So I don't rely on civilian witnesses' speed detection as a means of prescribing speed.*<sup>42</sup>

99. SC Meddick further noted that there was no interference with traffic at this intersection.
100. Ballarat 528 broadcast that speed of the HiAce van as it was travelling away from the town and west along Inglis Street was approximately 120kmh in a 60 kmh zone. The traffic was reported to be light, and the vehicle was noted to be heading towards the Western Freeway.
101. SC Heap stated that *as the van travelled at this speed I still considered the pursuit of the vehicle to be safe. The van was travelling on a country road which was straight and there was no other traffic around. The van had only travelled at this speed for a very short distance as we were approaching the intersection with the Geelong-Ballan Road and the van was starting to slow again.*
102. Scott McCallum who was travelling east on Inglis Street from Crossroads Trading observed the HiAce van coming towards him and said, *I would easily have thought he was doing double the speed limit.*<sup>43</sup> He estimated that the police vehicle was travelling at a similar speed.
103. After exiting the township of Ballan, the HiAce travelled west along Inglis Steet back towards its intersection with Geelong-Ballan Road at which time it turned right and travelled north towards the Western Freeway.
104. At 2 minutes 40 seconds into the pursuit transmission, the Pursuit Controller asked Ballarat 528 *to keep the speeds and manner driving coming.*
105. SC Meddick broadcast in response that the HiAce van was *travelling at approximately 100 kph and he just got stuck behind a truck, and he's just turned west onto on ramp heading towards Ballarat.* The D24 operator was also heard to ask whether there were any Ballarat highway patrol units and Ballarat 652 was heard to respond.
106. The HiAce van drove onto the Western Freeway and travelled west. The freeway had a speed limit of 110 kmh.

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<sup>42</sup> T178 L1-8

<sup>43</sup> T77 L30

107. Jeffery Flint, who was also travelling towards the Western Freeway, stated (he also produced dashcam footage from his vehicle that was played at the inquest),

*At approximately 2.20pm I went under the next overpass which goes to Ballan during this time I was talking to my wife on my hands free kit. As I was approaching the on ramp to the West Bound carriageway [when] I first saw a truck. I then saw a white van over take the truck while they were both still on the on ramp. I then saw a silver sedan, its lights were flashing on and off in a pattern. I then saw the blue and red lights on the silver sedan and realised it was an undercover police vehicle. The police vehicle then also overtook the truck and pulled up next to the white van. By this time the van was in the slow lane (left-hand lane) travelling west bound and the police vehicle was in the fast lane (right-hand lane). ...*

*The white van then swerved deliberately towards the police vehicle and then pulled in front of them driving down the middle of the two lanes. I think I said 'He just cut off an undercover cop he is fully dragging him on'. I think at this time I realised it was a police pursuit.<sup>44</sup>*

108. SC Meddick said of Mr Flint's observations at inquest,

*I recall him moving over to the right lane, but – but I don't recall us as being cut off. I believe Senior Constable Heap was driving at sufficient distance behind the vehicle.<sup>45</sup>*

109. Inspector McCrory considered that Mr Flint's angle of view would not have allowed him to accurately make observations.

110. The HiAce van travelled along the freeway, with police in pursuit, for around 1.6 kilometres, reaching speeds of up to 130 kmh.

111. SC Heap stated, *I believed the freeway to be more suitable to intercept the van by utilising other units. ...It did feel that once on the freeway the occupants had limited options regarding directions to travel or to turn off.* He further stated that he thought he observed two long haired female passengers in the HiAce van, but did not see the driver.

112. SC Heap stated regarding his risk assessment on the Western Freeway,

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<sup>44</sup> Statement of Mr Flint dated 19 September 2017.

<sup>45</sup> T180 L21-25.

*I continued the risk of continuing this pursuit. The van was not travelling at an excessive speed. I estimate it to be travelling slightly faster than other vehicles. The driver of the van wasn't driving erratically and he actually maintained straight driving path within the right lane.*

113. At this time, within the emergency breakdown lane was a VicRoads Road Maintenance Isuzu 6-tonne tipper truck, parked partially on the grass shoulder and partially in the emergency breakdown lane, with two VicRoads employees inside the vehicle with its safety lighting activated on the truck. The VicRoads Maintenance truck had stopped to conduct routine inspection and maintenance of the roadway surface of the Western Freeway.

114. Shortly before the fatal collision, the HiAce van was observed to attempt to overtake a large B-double semitrailer on the left-hand side of the emergency lane.

115. Mr Flint said, *I could see the van get stuck behind a truck in the fast-lane. The van then went to overtake the truck on the left. There was another truck parked in the emergency lane, I saw a cloud of dust and debris and knew the van had hit the truck that was parked in the emergency lane.*

116. According to SC Heap, he observed the HiAce van suddenly move from the right lane onto the emergency stopping lane and then accelerate up the left hand side of the truck in the emergency lane, and this was the first time the driver of the HiAce van had given him cause to believe that he was now a danger to other road users. He stated,

*I instantly felt that the pursuit should now be terminated.*

...

*At no time did I feel that by pursuing this vehicle I had placed other persons in danger or fear for their safety. I continually conducted risk assessments and it was not until the moment prior to the collision that I believed the pursuit needed to be terminated.*

117. At 3 minutes 24 seconds into the pursuit transmission, SC Meddick broadcast, *we're still heading west on the Western Highway just past the speed check at Ballan* but seconds later following a request for the speed of the HiAce van to be updated (at 3 minutes 36 seconds into the pursuit transmission), SC Meddick transmits, *he's just collided with a truck.*

118. The duration of the pursuit from the point it was called over the police radio, was around four minutes and 50 seconds.



119. Detective Sergeant Robert Hay, Forensic Services Department Collision Reconstruction Unit conducted a reconstruction of the accident and stated,

*It is my opinion that the Hiace van was travelling at approximately 130 Km/hr on the Western Freeway.*

*The driver of the Hiace has attempted to pass a B double combination on the left hand side, in the emergency left hand lane. After it crossed from right lane to the emergency lane the driver has seen a stationary light truck parked in the emergency lane. The Hiace van has struck the stationary light truck on the rear driver side corner of the tray. After striking the stationary light truck, the Hiace was struck from behind by the leading edge of the container on the A trailer by the combination it was trying to pass. At the time the combination was travelling at 91 km/hr, This has caused the roof and passenger side to separate from the van.<sup>46</sup>*

120. Investigators observed that at the time of the collision the weather was dry and fine and it was daylight with clear visibility.
121. The initial collision scene with the VicRoads truck occurred about 2 kilometres from the entrance ramp of the Geelong-Ballan Road. The HiAce van was extensively damaged and was driven for a further 240 metres before it veered left into the grass and the male driver exited the vehicle. His physical appearance was then observed for the first time and he was immediately identified by police as Mr Cairns. SC Heap said at no other time was he aware of the identity of the driver, although he suspected it may have been him.
122. As a result of the collision Jacqueline was thrown from the vehicle and suffered unsurvivable injuries.
123. Mr Cairns suffered minor injuries and fled the scene on foot, where he was chased by police. He ultimately stole another vehicle and was involved in another collision before being located at a residence and arrested.
124. Mr Cairns was transported to hospital where a sample of his blood was taken and analysed. The results indicated the presence of methylamphetamine (~ 0.11 mg/L), Droperidol (~307 ng/mL), and Lignocaine.

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<sup>46</sup> Statement of DS Hay dated 13 November 2017.

125. Associate Professor Morris O'Dell, Senior Forensic Physician at the Victorian Institute of Forensic Medicine (**VIFM**) provided the following opinion regarding the substances detected in Mr Cairns' blood,
- Mr Cairns was driving after having consumed methylamphetamine.
  - It is not possible to determine the dose or time of use of drugs from the blood analysis result.
  - He had a blood concentration of methylamphetamine of ~0.11 mg/L within 3 hours of the collision. The blood level while driving would not have been greatly different.
  - The description of the circumstances of the collision which involved speeding and a dangerous overtaking attempt are in keeping with the effects of methylamphetamine on a driver.
  - Methylamphetamine is a drug capable of rendering a person incapable of having proper control of a motor vehicle at the blood concentration found in this case.<sup>47</sup>
126. On 26 October 2017, Acting Sergeant Brickley of the Mechanical Investigation Unit carried out a full mechanical inspection of the HiAce van and concluded, *the inspection did not reveal any mechanical fault with the vehicle which would have caused or contributed to the collision.*
127. During the pursuit through the Ballan township the vehicles drove past the Ballan Police Station where Sergeant Michael Kearnes (**Sgt Kearnes**) and Senior Constable Nicholas Wallace were working. After hearing the radio transmissions concerning the pursuit, they left the station in a fully marked Ford Territory (Callsign Ballan 251) and drove through a number of streets in the Ballan township but at no time did they sight either of the vehicles involved in the pursuit. When the radio transmission subsequently indicated that the HiAce van had headed west out of town towards the Geelong-Ballan Road and Western Freeway, Sgt Kearnes drove in that direction to assist but did not come across either vehicle until after the collision had occurred.

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<sup>47</sup> Report of Associate Professor Morris Odell dated 30 November 2017.

## IDENTITY OF THE DECEASED

128. On 25 September 2017, Scott Vodden identified his daughter, Jacqueline Isabella Vodden, born on 5 May 2001.
129. Identity is not in issue and required no further investigation.

## CAUSE OF DEATH

130. On 21 September 2017, Professor Stephen Cordner, forensic pathologist at VIFM conducted an external examination and prepared a written report dated 4 December 2017.
131. Toxicological analysis of blood showed no alcohol or prescribed drug, however *there was what is generally regarded as a high level of delta 9 tetrahydrocannabinol, an active metabolite of cannabis (~ 81 ng/mL).*
132. Professor Cordner formulated the cause of death as *Multiple injuries (head, chest, pelvis and left femur).*
133. I accept Professor Cordner's opinion.

## EXAMINATION OF ISSUES

### *Applicable Victoria Police pursuit policies in Victoria*

134. At the time of Jacqueline's passing, the relevant Victoria Police policy governing pursuits was contained in the Victoria Police Manual (VPM) *Pursuits*.<sup>48</sup>
135. The Policy made the following overarching statement with respect to police pursuits,
- Victoria Police will make every effort to identify and apprehend offenders, including drivers who fail to stop when directed. However, police member's **duty to protect life will always have primacy over the need to arrest offenders**, especially when there are safer options other than immediate arrest.*
- There are **inherent risks** with conducting pursuits; risks to the community and other road users, the occupants of pursued vehicles and to police members. Therefore, **pursuits are not the primary means for effecting the apprehension and arrest of fleeing drivers and may***

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<sup>48</sup> At the time of Jacqueline's passing, relevant Victoria Police policy also included VPM *Urgent duty driving*.

*only be conducted when specific criteria are met. The intent of this policy while maintaining the ability to pursue vehicles where there is a serious risk to the health or safety of any person.*

*This policy sets the criteria for conducting pursuits and how members are to **manage the risks** involved in order to protect the public and themselves. [Emphasis added]*

136. A pursuit is defined to have occurred when a police vehicle continues to follow a vehicle that,

- has failed to comply with the member's direction to stop; or
- is taking deliberate action to avoid being stopped.

137. The overview principles note that, members must plan vehicle intercepts and consider alternatives to immediate apprehension of the driver of a vehicle who fails to stop when directed. And in circumstances where a pursuit is conducted, the members must assess whether continuing the pursuit is justified against the Pursuit justification criteria (3.2) and the assessment in Risk assessment and decision making guide (3.4) must be continually applied throughout the pursuit. When the pursuit no longer meets the criteria, the pursuit must be terminated immediately.

138. The principles further note that,

*Any decision that aims to limit the risks to the public, including offender/s, and police, will be viewed as a decision that displays sound professional judgement.*

Pursuit justification criteria (3.2)

139. The Pursuit justification criteria states:

- Members may only conduct a pursuit when they reasonably believe a serious risk to the health or safety of a person exists before attempting interception and there is a need to prevent or respond to that risk; and
- Other means for apprehending the vehicle occupant/s are not practicable; and
- The serious risk they are seeking to prevent or respond to is greater than the risks involved in conducting the pursuit at that time.

When assessing whether alternative responses to immediate apprehension are practicable, considerations included whether:

- The driver needs to be apprehended immediately, given the nature of the offence or behaviour; and
- A planned approach is possible and likely to be safer and more effective; for example where the offenders are known or can be located, or additional resources are required.

Risk assessment and decision making guide (3.4)

140. The pursuit policy asks police to conduct a risk assessment using HIARRC<sup>49</sup> and continually reassess throughout the pursuit.

141. The *known hazards* are categorised as follows:

<b>Lower Risk</b>	<b>Increasing risk</b>	<b>Higher risk</b>
At/below speed limit	Speed of vehicle	Excessive/high
Adult passengers/no passengers	Driver age/passengers	Young driver or passenger
Not impaired	Impairment	Alcohol/drugs/distraction
Open road/freeway	Condition of road	Wet/gravel/winding
Dry/sealed/barriers	Location	Schools/shops
No/light traffic	Other traffic/road users	Heavy/pedestrians/cyclists
Controlled/rational	Driving/behaviour	Erratic/risk taking
Newer vehicle/safety features	Vehicle	Older/motorcycle/less known safety features
Licensed driver	Other known factors/risks	Unauthorised driver
No known criminal history		Armed/wanted suspect
Registered vehicle		Stolen vehicle/plates

142. The guide states,

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<sup>49</sup> Hazard Identification, Risk Assessment and Risk Control

*If you are unable to assess any hazards then it is to be considered high risk.*

*Assess the risks – consider the known risks and the likely consequences of conducting the pursuit*

*Risk controls – are there controls in place to mitigate the risk and the potential consequences?*

*Is the serious risk you are seeking to prevent or respond to greater than the risks involved in conducting the pursuit at that time?*

143. The pursuit policy also places certain responsibilities on the observer who is primarily responsible for radio communications and must communicate the reason for the pursuit, speed, direction, environmental conditions, vehicle description and any other relevant information, and maintain constant radio communications.
144. The Police Communication radio dispatcher must immediately acknowledge the pursuit is taking place and notify a Police Communications Liaison Officer at Police Communications and the Patrol Supervisor, who in turn must acknowledge that a pursuit is taking place and assume the role of the Pursuit Controller (or delegate the role).
145. The Pursuit Controller must also, amongst other tasks, apply the Risk assessment and decision making guide and develop, communicate and implement resolution strategies.
146. Tactics and resources which may contribute to resolution strategies include, back up units, Air Wing, tyre deflation devices and specialist support units.

## **Analysis of pursuit**

***What was known or suspected by the police members comprising Ballarat 528 about the occupants of the HiAce van at the time of the attempted intercept/pursuit?***

*The identity of the driver*

147. The consistent evidence of the police involved in the pursuit was that the identity of the driver of the HiAce van was not known (until he left the vehicle after the collision) and the driver: could have been Mr Cairns; or someone else with a similar offending profile including an associate; or another individual who wasn't part of that group. DSC Cudia said at inquest, there was *no point in getting tunnel vision*.

148. Significant frustration felt by police emerged during the course of their evidence concerning the havoc apparently being caused by Mr Cairns and his associates who appeared to be continually and relentlessly offending, with great effect on the local community, and this had been occurring over a number of years. I note that Operation Streusal had been set up around Mr Cairns' offending and activities.
149. If however the police had identified Mr Cairns as the driver, the pursuit policy would not have permitted the commencement of a pursuit (based on the circumstances as they presented), as there would have been *other means for apprehending the vehicle occupant/s*.
150. In addition, and relevant to the risk assessment process, was that Mr Cairns and his associates were also known for *erratic driving* and other incidences where police observed dangerous driving in their presence. So whilst it might have been considered that there was a need to stop the offending behaviour of this group because of the risks to the community, their known willingness to engage in risky and erratic driving, would clearly bring its own risks into any pursuit being conducted.

Offences associated with the HiAce van

151. According to the Coroner's Investigator there were at least two other incidences which occurred on the day of the collision at about 1.30 pm in Marrod Close, Ballarat North which may have been associated with Mr Cairns. The first was said to involve a male being observed inside a garage which was attached to a house following which neighbours yelled out and the male offender returned to a van and drove away. The second incident involved entry to a two storey house where cupboards inside the house and garage were gone through and a set of keys were taken. Neither of these incidents were the subject of any communications over the police radio prior to the pursuit but there is evidence that some members of Ballarat 258 may have been aware of other offences. SC Heap however did not refer to him having knowledge of any other offending in his statement.
152. DSC Millar said,

*I believe that that white van was linked to some burglaries in the morning. ..., and then it turned into the aggravated burglary in the afternoon, when we were in the car. ...I think that's the information I was given in the morning.*<sup>50</sup>

153. SC Meddick also referred to communications regarding earlier offending, *it's from the earlier calls that they – where they have attempted to conduct an aggravated burglary with someone at home.*<sup>51</sup>
154. The settled evidence is however that the information available to the Ballarat 258 via the police radio related to the Nerinna job coupled with the HiAce van being a stolen vehicle with stolen number plates. It is possible that other information was known by the police about other potential offending that day, but I am unable to determine with any clarity what information was known and by whom.

#### ***Speed of the HiAce vehicle on Inglis Street through the township of Ballan***

155. A conflict arose in the evidence about the estimate of the speed of the HiAce van on Inglis Street when it first travelled through the township of Ballan (and later), as set out above.
156. The analysis of Forensic Officer Shearwood, at least from the CCTV which was able to be analysed over a 19 metre frame, was generally consistent with the evidence of two civilian witnesses who were present at the scene.
157. SC Meddick said he was using the GPS to gauge the speed of the police vehicle. The police witnesses did not agree that the HiAce van reached speeds of 100 kmh when it first entered the township or at any other time. DSC Millar stated, *They would have been going above the speed limit, but not that fast.*<sup>52</sup>
158. Based on the available evidence however including the evidence of Forensic Officer Shearwood coupled with the account of the two civilian witnesses who had eyes on the HiAce vehicle as it travelled down Inglis Street, I consider it likely that the HiAce van was travelling at around 100kmh on Inglis Street between Cowie and Stead Street at the early part of the pursuit.

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<sup>50</sup> T-312 L31 – T 313 T 1-2

<sup>51</sup> T149 L6-10

<sup>52</sup> T322 L29-30



159. Relevant to this determination, I note that the police vehicle was a distance behind the HiAce van, SCs Cudia and Millar were in the rear of the vehicle and SC Meddick did not have access to an In Car Video or a view of the speedometer and was trying to assess speeds, when he could, from the GPS. SC Heap was not available to give further evidence on this matter. As will be discussed later, findings of other coronial investigations have revealed that police struggle to estimate the speeds of vehicles being pursued during a pursuit (as well as the speed of their own vehicle).

***Pursuit justification criteria***

160. The information available to Ballarat 258 via the police radio prior to the pursuit related to the Nerinna offending (as described above) coupled with the HiAce van being a stolen vehicle with stolen number plates. As already noted, it is unclear what other information was known to the police about other potential offending that day, but it is clear that no other information in relation to other jobs had been broadcast over the D24 radio prior to the pursuit.

161. In addition, and as already noted, SC Heap did not refer to his knowledge of any other offending in his statement including with reference to the pursuit justification criteria.

162. Police witnesses were in agreement that a *serious risk to the health or safety of a person existed before the attempted interception and there was a need to prevent or respond to that risk* (as required by the pursuit policy), on the basis of the Nerinna offending being considered an attempted aggravated burglary. Inspector McCrory agreed that the description of the Nerinna offending was sufficient to meet the pursuit justification criteria.

163. In addition to the Nerrina offending however, DSC Cudia included as part of the pursuit justification that the HiAce van was engaging in dangerous driving – that is, *speeding and becoming a risk to, ..., the public that - that's my reason for the pursuit.*<sup>53</sup>

164. SC Cudia stated that she thought the van had been involved in a *home invasion* rather than an attempted aggravated burglary.

165. SC Meddick said of the risks being presented or responded to,

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<sup>53</sup> T269 L10-11

.... the justification was that this – this stolen van, containing two people who were conducting high volume crimes, including aggravated burglaries, and attempted aggravated burglaries, were a serious risk to the health and safety of a person, because I – my opinion, they were going to continue conducting these if we didn't stop them, and the high possibility of them coming into contact with a person inside a house that they would enter – ..., well they needed to be stopped before something like this happened. So either themselves or a, ... – or a person inside these houses was seriously hurt, if a confrontation did occur.<sup>54</sup>

166. SC Meddick said he thought that the occupants of the HiAce van were conducting high volume crime in the area from earlier calls but during his evidence Counsel Assisting clarified that the justification for pursuit was on the basis of the Nerinna offending and what he *knew about that type of offending, generally, in that regional area, and the types of persons that were associated with that offending, generally.*<sup>55</sup>
167. It is apparent however that the Nerinna offending, if looked at in isolation and without any presumptions about the people who may have been involved, was offending that would be considered on the lowest end of serious offending behaviour.
168. With respect to the second criteria which concerned other means for apprehending the vehicle occupants not being practicable, SC Meddick said that as they did not know who the occupants of the vehicle were at the time of the intercept so there were no other practicable means open to them.

### ***Application of the Risk Assessment***

#### *Observations of risky or unsafe behaviour or offences against road rules during the course of following/pursuit of the HiAce van*

169. There was evidence of a number of incidences of driving which were capable of being considered risky or unsafe behaviour or offences against road rules by the driver of the HiAce van, on the assumption that the observations and/or evidence was accurate. Dividing the course of the following/pursuit into distinct areas, these incidences included:

#### *Attempt to Intercept*

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<sup>54</sup> T148 L22-31, T149 L1-3

<sup>55</sup> T150 L5-8

- travelling on the wrong side (south) of the traffic island at Crossroad Trading.

*Initial travel east along Inglis Street in the main part of the Ballan township*

- overtaking a vehicle on the wrong side of the road approaching the intersection of Inglis and Fisken Street.
- travelling at double the speed limit (~ 100kmh) on Inglis Street in the Ballan township.
- slowing down then speeding up then slowing down over and over along Inglis Street as if the driver was trying to cause the police vehicle to collide into the rear of the van, as described by SC Heap.
- *dangerous driving* as described by SC Cudia, which in her mind was sufficient to justify the pursuit (in addition to attempted aggravated burglary) in the Ballan township but possibly during other parts of the pursuit.
- travelling on the wrong side of the roundabout at the intersection of Inglis and Cowie Street causing a truck to take evasive action.
- *The whole of this guys driving was really dangerous going down the main street (Inglis Street)*, as described by Mr Perks.

*Travel through the backstreets of the Ballan township south of Inglis Street;*

- No specific issues identified by police.

*Crossing Ballan township from south to north of Inglis Street*

- travelling at speeds described as *flying* whilst travelling north through the intersection of Inglis and Fisken Street as described by Mr Perk.

*Travel through the backstreets of the Ballan township north of Inglis Street*

- No specific issues identified other than a passenger moving behind the front seats of the HiAce van, as described by SC Meddick.

*West along Inglis Street out of the Ballan township*

- travelling 120kmh in a 60kmh zone travelling west along Inglis Street out of town towards the Western Freeway.

- travelling at an estimated speed of 100-120kmh along Inglis Street (and possibly without seat belts) as described by Mr Davies.

#### *Travel on the Western Freeway*

- the HiAce cutting the police vehicle off and *fully dragging him* whilst on the Western Freeway in the minute before the fatal collision as described by Mr Flint.
- Overtaking a truck in the emergency lane on the Western Freeway in the moments before the fatal collision.

#### ***Risk Assessment***

170. Giving consideration to the *Risk assessment and decision making guide* the following could be regarded as lower risks:

- **At/below speed limit**, the police considered in general that the HiAce van travelled at a reasonable speed, and where it was higher than the speed limit, not sufficient to terminate the pursuit;
- **Open road/freeway**, the police considered that when the pursuit headed out of the Ballan township and was on the Western Freeway the risks of the pursuit were lowered. SC Meddick stated,

*Given the fact that you have a lot higher visibility of the oncoming traffic, and also if other traffic that are ahead of you are looking in their rear vision mirror, so they hear our sirens or something going, then they also have a reasonably clear vision, looking in the rear vision mirror, of what's coming up to them. So if they were able to make a manoeuvre – if they felt they needed to move over or make a manoeuvre, they would be able to see us in time. ...., the forward – forward vision for us is quite clear, and these are long stretches of the freeway, where it's a straight stretch of road, with the odd – with a slight curve. There's no real sharp curves or anything like that along the Western Freeway. So, yeah, basically high visibility is a main factor in the safety.<sup>56</sup>;*

- **Dry/sealed/barriers**, the police considered this was a relevant lower risk;

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<sup>56</sup> T217 L9-23

- **No/light traffic**, despite the initial travel through Inglis Street in the Ballan township, the police considered there was little traffic on the roads or pedestrian activity during the course of the pursuit;
- **Controlled/rational**, the police considered that the HiAce van was largely controlled in its driving, travelling at sufficiently safe speeds, slowing and indicating at intersections and controlling the direction of travel; and
- **Newer vehicle/safety features**, the police did not identify issues with the vehicle and considered it to be slow moving and without significant power.

171. Giving consideration to the *Risk assessment and decision making guide* the following could be regarded as higher risks and where this it is not known the risk is assumed to be high:

- **Excessive/high** – as noted above it is my view that the HiAce van was likely travelling around 100kmh down the main street of the Ballan township. The police did not agree with this assessment and said if it had been, the pursuit would have been terminated. The police considered the speed of the HiAce van as it travelled out of town was double the speed limit but was not unsafe given it was on a rural road with limited traffic and housing.
- **Young driver or passenger** – The police recognised that the driver was young and there was a passenger. These factors were recognised by police as higher risk factors. SC Heap also said that he observed two female passengers whilst the HiAce van was on the Western Freeway.
- **Alcohol/drugs/distraction** - This information was unknown to police so was required to be presumed as a higher risk. As already noted, this presumption would later be determined to be accurate as Mr Cairns had consumed methamphetamine in a quantity likely to affect his ability to drive.
- **Schools/shops** – The police acknowledged that there were shops and a school on Inglis Street in the main part of the Ballan township as well as Crossroad Trading, but considered that these circumstances were confined to these areas.
- **Erratic/risk taking** – There were a number of erratic/risk taking actions of the HiAce van which the police observed but were characterised by them as momentary actions. This included the incident at the roundabout at Inglis and Stead street which was

described by SC Meddick as a *momentary thing* following which he continued straight ahead, and by DSC Millar as a *minor risk*.

- **Unauthorised driver** – This information was unknown to police so was required to be presumed as a higher risk. This presumption would later be determined to be accurate as Mr Cairns was an unlicensed driver.
- **Armed/wanted suspect** – This was a known higher risk given the information available to police at the time.
- **Stolen vehicle/plates** - This was a known higher risk given the information available to police at the time.

172. It was generally acknowledged by police that the risks of the pursuit tended to fall in the higher end of risk factors, given the above analysis which was put to various witnesses by Counsel Assisting.

173. It was also generally acknowledged that the Nerinna offending taken in isolation would also be considered on the lower end of offending behaviour.

174. SC Meddick however considered that the risks they were seeking to prevent remained greater than the risk of the pursuit itself.

175. SC Cudia stated,

*From my point of view I had no concerns for my safety and I didn't hear anyone else voice any concerns. ....I don't believe that the pursuit was ever dangerous enough that it needed to be terminated and I felt comfortable with the ability of [SC Heap] to continue. From my point of view I had no issues with the way in which both our vehicle or the van we were pursuing was being driven and would have expressed my concern if I had felt any other way.<sup>57</sup>*

176. According to his statement, SC Heap said that he was continually assessing the risk associated with the pursuit, and it was not until the vehicle swerved from the right lane to the emergency lane immediately prior to the collision that he felt the driver was a danger to other road users, and that the pursuit should be terminated.

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<sup>57</sup> Statement of SC Cudia dated 19 September 2017.

177. As to the final movement of the HiAce van to the emergency lane which was said to have come as a surprise to police, DSC Cudia said *it probably was a surprise. But these criminals will do anything to get away from us.*<sup>58</sup>
178. Police consistently stated that they were aware of the requirements of the pursuit policy and were constantly undertaking risk assessments, and that the risk being addressed outweighed the risks of the pursuit.
179. A review of the police statements revealed that the higher risks recognised by the pursuit policy such as, a young driver (and passenger), an alcohol or drug affected driver, the driver being an unauthorised driver, the driver being a wanted suspect and it being a stolen vehicle fitted with stolen number plates, were generally not referred to when a member outlined the risks considered as part of the risk assessment undertaken. I note in this regard that SCs Meddick, Cudia and Millar made their statements shortly after the fatal incident having commenced work early that same day, and the comprehensiveness of their statements should be considered in this context.
180. SC Heap however made his statement about a week after the incident. He made reference to different risks being considered but they generally concerned the road conditions, the amount of traffic (including pedestrians), the capacity of the HiAce van and the manner and speed the van was travelling.
181. I make the comment that without any acknowledgement of the higher risk factors being specifically included in his statement as part of the risk assessment he undertook, it is difficult to understand whether and/or how these risks were factored into the risk assessment as required by the policy. This is especially relevant given there was general agreement that the risks involved in the pursuit were on the higher end.
182. There was also no indication in his statement of whether the seriousness of the Nerrina offending was weighed in the risk assessment process, which is relevant given the requirement of the policy to consider whether the seriousness of the risk is greater than the risks involved in conducting the pursuit.
183. I was not able to clarify these matters with SC Heap at the inquest.

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<sup>58</sup> T264 L9-10

## ***High task load in a police pursuit***

184. In an earlier coronial investigation my colleague, Coroner John Olle said,

*In highly dynamic and stressful environments, such as in a pursuit, there are perceptual and cognitive challenges experienced by human beings, which Dr Edkins described as Situational Awareness (cognitive skills that enable the effective selection and comprehension of information from the environment) and Attention Capture (for example where a person becomes fixated on the central task to the exclusion of other factors that may be important). In a pursuit situation, a person can become so focussed on the target vehicle that they have diminished scanning for and awareness of peripheral hazards.*

.....

*He said that hazard identification was dependent on perceptual and cognitive skills - which are subject to information processing limitations. He said there was a potential for cognitive overload and consequent task shedding.<sup>59</sup>*

185. SC Meddick described the vehicle during the pursuit as *very very busy* with him having to *attempt to do a lot of things at once* such as *continually giving communications, conducting constant risk assessments as we're going along, trying to listen the radio, trying to give directions to Senior Constable Heap* (who was not familiar with the area), *trying to look at speeds on our GPS* because he couldn't see the speedometer, trying to look out for any other vehicles or persons that may be in the area, and communicating and listening to other occupants in the vehicle (*there was a lot of conversation in the car....all talking at the same time*).

186. It was apparent that the first speed during the pursuit was communicated by SC Meddick around 2 minutes and 35 seconds after the transmission that Ballarat 528 was in pursuit. It is also evident that whilst it was agreed that the pursuit had commenced by the time the

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<sup>59</sup> Findings into the death with Inquest (Stage Two) Police Pursuits – Comments and Recommendations, Sarah Booth, COR 2006 4974, page. 16. Dr Edkins was engaged by the Court for the earlier investigation and the following was noted with respect to his expertise: *Dr Edkins, Manager Director Leading Edge Safety systems Pty Ltd, a specialist safety management systems and human factors consulting organisation, that provides expert advice to company boards, executives and accident inquiries on safety, risk and human factors issues. He holds a Masters and PhD degrees in Organisational Psychology and has extensive experience in the field of human factors developed over more than 25 years.*



vehicles first reached the intersection of Inglis and Fisker Street or shortly after, the first broadcast occurred after the police turned right into Stead Street from Inglis Street.

187. SC Meddick stated as to why there was no earlier transmissions regarding speeds,

*No, there's no reason. ..., like I said – I've been saying, it's very busy in the car. I was trying to do five or six things at once. And from my memory recall, I thought that I had actually come up with a lot more comms, and I was actually conveying speeds at the time. But obviously, radio transmissions have shown that I wasn't doing .... what I thought I was doing...*

188. As already noted, the observers responsibility in a pursuit is to maintain constant radio communications and they must communicate reasons for the pursuit, speed, direction, environmental conditions, vehicle description, and any other relevant information.

189. SC Meddick also said that given the high task load in the vehicle, the reason for the pursuit was erroneously given as *dangerous driving* and this was an oversight. He agreed that the requirement to broadcast other 'relevant information' as noted in the pursuit policy would include matters that would affect the risk assessment of the pursuit and it would be helpful for the pursuit controller to have any higher risk factors identified in the pursuit policy to enable him to assess risks, including that there was a passenger in the vehicle.

190. SC Meddick agreed in hindsight, that there could have been some more things conveyed to the pursuit controller but at the time, he thought he was in fact conveying those matters.

191. Also relevant to this issue was the frequency of radio traffic and the difficulty in some circumstances to broadcast when there were competing interests (relevant to the conduct of the pursuit) although it was agreed that there should be no primacy over critical information affecting a risk assessment from being broadcast.

### ***Pursuit Controller***

192. The Pursuit Controller also plays an important role in undertaking a risk assessment of the pursuit, and can terminate the pursuit at any time.

193. The ability to perform that risk assessment is however dependent on the information made available via radio communication from the observer.

194. It is clear from the evidence that there were limited radio communications from the observer throughout the length of the pursuit, with SC Meddick giving evidence that he thought his updates were more frequent and descriptive than they were. This included the speed of the HiAce vehicle and environmental conditions, although he knew that Inspector McCrory was familiar with the Ballan township.
195. It was also apparent that SC Meddick initially broadcast an inaccurate reason for the pursuit (being dangerous driving).
196. The pursuit controller, Inspector McCrory gave evidence that he was very familiar with the Ballan area as well as the expertise of the members of Ballarat 528 and when the pursuit first commenced he understood it was taking place in the southern back streets of the Ballan township which is a residential area of Ballan. In terms of dangerous driving being broadcast as reason for pursuit, he said that *Manner dangerous is a very serious, ..., driving charge and yes, I was satisfied there was a significant risk that the members, ..., had assessed.*<sup>60</sup>
197. With reference to the pursuit criteria Inspector McCrory clarified that stolen vehicles and *scouting* do not comprise serious risks to justify a pursuit but he did consider that the Nerinna offending met the pursuit justification criteria,  
  
*I believe, ..., the seriousness of aggravated burglaries, ..., meets that criteria, ..., of the serious risk to my community.*<sup>61</sup>
198. As already noted, Inspector McCrory said he understood that the pursuit was taking place in very quiet back streets of Ballan, and therefore the risks at that time were *very low* and he had sufficient information at that time to assess the risks. He did however agree that some speeds, the age of the driver, the presence of any passengers, traffic conditions, pedestrians, presence of shops or the nature of the dangerous driving hadn't been communicated but he was aware of the location, had knowledge of the vehicle (not high powered) and he considered the members of Ballarat 528 to be *very experienced* investigators.
199. Inspector McCrory noted that it would be very busy in the vehicle and on the air, and in those circumstances it's not always a requirement to broadcast what has occurred in the past.

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<sup>60</sup> T356 L27-29

<sup>61</sup> T359 L21-23

200. He said with reference to speeds, that he *would love to have had more information, and anyone in his role would love to have that information. I didn't have it.*
201. He noted that the driving behaviour of the vehicle in the minutes prior to a pursuit (such as the incident at the intersection of Inglis and Stead Street) or multiple occupants in the vehicle are relevant considerations to the risks posed by the pursuit.
202. With respect to making assessments of risk and formulating decisions based on imperfect information he said,
- ..., very difficult, ..., in my position as a pursuit controller, ..., and this is where you have to rely on the training and experience of the members that, ..., are in pursuit, ..., and that are giving you that information, ..., and are, ..., acutely aware of the activities in a police vehicle during the pursuit, ..., and you can only hope that you get enough information to identify risk and make assessments.*<sup>62</sup>
203. Whether the pursuit controller had adequate information from the Ballarat 528 vehicle to allow him to properly understand and assess the risks posed by the pursuit, Inspector McCrory said,
- I had sufficient information during this pursuit to, ..., make ... - a considered judgment as to whether or not it was justified and whether or not it could continue.*<sup>63</sup>

***Length of the pursuit - Is the pursuit working?***

204. From the point the pursuit was called over the police radio, there was around four minutes and 50 seconds before the fatal collision.
205. It should be noted that the pursuit was not interrupting an offence which was in the process of being committed by the occupants of the HiAce van. It is clear that the driving of the HiAce van was in response to the pursuit itself.
206. There was no evidence as the course of the pursuit continued that the driver of the HiAce van intended to stop and I was concerned in these circumstances that the driving behaviour could become more desperate and heighten over time.

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<sup>62</sup> T385 L26-31, T386 L1-2

<sup>63</sup> T386 L9-12

207. It is important therefore to give consideration to whether the actions of police by conducting a pursuit are effective over the passage of time, and how this impacts on the assessment of the risk of the pursuit continuing.
208. SC Meddick said that he was hoping the driver would stop, but can't recall if he turned his mind to whether he thought he would. Inspector McCrory said that in a rural environment it would not be unusual for a vehicle being pursued to go off road, or pull over and for the driver to flee on foot. In addition, that an important consideration is 'keeping eyes' on the vehicle while resolution strategies are put in place.
209. In response to whether consideration was given to the risk of the HiAce van taking more evasive action as the length of the pursuit continued, in circumstances of it being wanted and the pursuit having higher risk factors featured, SC Meddick said,

*Yes, that was taken into consideration, ...Given the fact that there was only maybe one or two manoeuvres, that were very quick, and then returning to the lower risk manoeuvres – driving in the correct lane – these were – these were all considered, and that's why we didn't terminate the pursuit. But as we got onto the freeway, and just before the collision occurred, I was about to come up and terminate the pursuit, given the fact that he was making an extremely high-risk manoeuvre by trying to overtake the truck in the emergency lane.<sup>64</sup>*

### ***Technology in the police vehicle***

210. As already noted, the police vehicle was not fitted with a MDT or an ICV but instead was fitted with a standalone GPS.
211. MDTs, which are inbuilt with GPS systems, enable GPS location data to be recorded at specified intervals. When police are in pursuit (or urgent driving), information is recorded at 3 second intervals. The data includes the vehicles' locations as latitude and longitude, heading, speed and the time it is recorded.
212. An ICV operation is such that once the emergency lights are activated, it starts recording, including the 30 seconds prior to the unit being activated. This can assist with investigations by providing an independent and contemporaneous visual record of these events in addition

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<sup>64</sup> T217 L30-31 – T218 L1-10

to any GPS data [recorded in second increments]. It also clearly displays speeds in the police vehicle.

213. As already noted, SC Meddick could not see the speedometer from his position and relied on the GPS. He said at the inquest,

*I work in highway patrol now, and we're all fitted with in-car video, which has speeds and everything on there. So that would assist. And especially with investigations after, it would definitely assist with that.*<sup>65</sup>

### ***Police pursuit policy in Victoria***

214. The coronial brief included a lengthy statement from Assistant Commissioner Elizabeth Murphy<sup>66</sup> which set out a history of pursuit policy reform from about 2002.

215. It was apparent that coronial investigations had played a role in changes that had been made to the pursuit policy over time. This included the research of the Coroners Prevention Unit which had been prepared for a cluster investigation arising in the context of police pursuit deaths.<sup>67</sup> The best policies were described as those which strike the most appropriate balance between minimising the risks and maximising the benefits of police pursuits and, adopt an approach based in ethics and risk management rather than empirical data.

216. Relevant observations from previous coronial investigations included,

- The most difficult factors to control in a pursuit environment are the variables associated with the target driver and their vehicle as well as other road users - the unknown risks.
- There will always be more unknown than known risks.
- Police routinely struggled to engage in a proper estimation of both the speed of the target vehicle and their own vehicle.
- The task of risk assessment was hampered by an inability to estimate target vehicle speed.

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<sup>65</sup> T 167 L 20-24

<sup>66</sup> Dated 11 June 2021.

<sup>67</sup> Findings into the death with Inquest (Stage Two) Police Pursuits – Comments and Recommendations, Sarah Booth, COR 2006 4974.

- The task of risk assessment becomes more difficult once a pursuit commences and the task of identifying and weighing multiple factors when police are already engaged in a number of other tasks was a difficult one.

217. Key amendments were made to the Victoria pursuit policy in 2016, with the overriding intent of the policy the same as what had previously been in force - which was the minimisation of death and serious injury associated with police pursuits.
218. The resulting policy was reached over a number of years with the benefit of internal and independent reviews as well as consultation with Victoria Police members (in addition to coronial investigations).
219. As already outlined, the justification for a pursuit is primarily based upon a need to address a serious risk posed by the offender to the health or safety of anyone but the serious risk must exist before police involvement. There was a requirement to record both the reason and rationale for conducting, continuing and terminating pursuits. Risk was to be assessed on what is, or was, present or probable - not merely possible. Events or circumstances such as stolen number plates, stolen vehicles or other property offences would not generally justify a pursuit.

### ***Training***

220. With the introduction of the 2016 pursuit policy, all operational members were required to complete the Pursuits 2016 Online Learning Course by 31 December 2016, and to produce a certificate of completion as a pre-course requirement for the 2017 Operational Safety and Tactical Training (OSTT).
221. Clarification of the pursuit policy was provided to members in May 2016 which included<sup>68</sup>:

*For any identified behaviour that causes a serious risk to public health or safety, or where there is an offence that has occurred or is about to occur that involves serious injuries, members can consider engaging in a pursuit, if the risk doesn't outweigh the benefit. This may include property or minor traffic offences. For example:*

- *Offenders who ram police cars or deliberately drive at police members are a serious risk to public health and safety.*

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<sup>68</sup> Coronial Brief at page 1491

- *A drink driver, or a driver off their medication travelling through red lights on busy road may be considered a minor traffic offence BUT it could also be a serious risk to public health or safety.*
- *Offenders committing armed robberies or **aggravated burglaries** are a serious risk to public health and safety.* [Emphasis added]

222. A review of the training material provided as part of the coronial documents highlighted the following,

- *Serious risk* is a subjective assessment. What some see as a serious risk others may not. It should be present and probable, not hypothetical and has to be on known facts.
- Risk to health or safety is not limited to physical injury or harm. It can also include the safety, the perception of safety or the mental health of a person, a group or community.
- The serious risk to health and safety is to be judged on the behaviour present before police involvement.
- Questions for police to ask include, *How will engaging in a pursuit address that serious risk?*
- The risk of each pursuit should also be assessed against the likely consequences.

## CONCLUSIONS

223. A coronial inquest into the death of a young person, such as Jacqueline is deeply saddening. It is also confronting for all those who are involved particularly where professional judgment is publicly examined.

224. The human cost is immense for the family and friends of Jacqueline as well as for the community, and there is exposure to grief and trauma for all those involved, including civilian witnesses, emergency personnel and police.

225. There were two other vehicles struck by the HiAce van that day, including a stationary maintenance vehicle which was parked in the emergency lane of the Western Freeway, in which two workers were seated. I consider it incredibly fortunate that there was no further loss of life arising from this incident.

226. It is evident that no person involved on the day, including Mr Cairns, intended the tragic outcome. By all accounts Jacqueline and Mr Cairns had a friendship, and it is apparent that the police were carrying out their duties to the best of their abilities on a normal working day.
227. Jacqueline's mother did however highlight during the course of Mr Cairns' trial that if he *'had just pulled over, no one, including him, would be living this nightmare'*, and we know that Mr Cairns was dealt with for his criminal conduct in the County Court.
228. Conversely, it is important to acknowledge that a pursuit in these circumstances is not interrupting an offence which is in the process of being committed – it is to prevent some future unknown harm which is yet to take place. The relevant policy clearly states that pursuits are not the primary means for effecting the apprehension and arrest of a fleeing driver. In this case it is clear that the driving of the HiAce van was in response to the pursuit and there was no suggestion in the police member's evidence that prior to conducting their U-turn, the HiAce van was driving in a dangerous or erratic manner.
229. The Victoria police pursuit policy acknowledges the inherent safety risks of a pursuit to members of the public as well as their own officers, and requires that a pursuit be a proportionate response where there is a need to attempt to stop an immediate danger and there is no other way of apprehending the person.
230. Police pursuits have been described as, *chaotic high-stress situations involving, physical danger, often incomplete information, elements of unpredictability and ever changing (dynamic) conditions.*<sup>69</sup>
231. There are multiple variables to consider in a pursuit, some of which can be controlled or mitigated, to a certain extent, including by operational rules governing when and how a pursuit can be conducted, police training and their equipment - although there always remains an element of uncertainty or unpredictability. For example, roads may appear to be clear but there may still be unseen vehicles or pedestrians.

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<sup>69</sup> Findings into the death with Inquest (Stage Two) Police Pursuits – Comments and Recommendations, COR 2006 4974, page. 16.



232. Likely the most unpredictable element of a pursuit is the behaviour of the person being pursued, which largely cannot be controlled or predicted. Often the most unpredictable being young males who are substance affected – as in this case.
233. As coronial investigations are conducted with the benefit of hindsight this allows a more complete understanding of the circumstances to be known, from which we hope prevention opportunities may derive. This has been my primary focus when examining the circumstances of Jacqueline’s tragic passing.
234. In making any comments regarding the particulars of this case, I am concerned with systems issues not individual police members who will only be as effective as the operational or environmental conditions allow, as well as the tools/equipment, guidance and training provided.
235. There is no doubt that the *task loading* on police when engaged in a pursuit is overwhelming and this is a well-recognised issue. As demonstrated in this case, it can affect a police member’s ability to estimate speeds, to accurately broadcast information and to assess whether and how they have undertaken certain tasks. The tasks affected may be critical to how a pursuit is conducted including the risk assessments required to be undertaken. Senior officers are not exempt from these effects.
236. In addition, police are required to apply a complex risk assessment framework, which is an intellectually challenging task required to be undertaken in high pressure conditions.
237. A further overlay is potential difficulties with radio communication space and less than ideal equipment.
238. In this case, the observer said that he couldn’t see the speedometer. The broadcasting of speeds is however one of the primary tasks for an observer to undertake. It has already been recognised from previous coronial investigations that estimations of speeds by police are difficult. These estimates are however critical to accurate risk assessments being made. This issue is not new in the operational conditions or environment of a pursuit.
239. A previous recommendation of this Court, was that *All police vehicles should be fitted with In Car Video*<sup>70</sup> which I understand has not been fully implemented. I was advised during the

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<sup>70</sup> Recommendation 3 of Booth Inquest.

inquest that there are many changes being made to police vehicles as well as the broader addition of body worn cameras which apply more generally.

240. I note that the police in this case indicated that if they had thought the HiAce van was travelling at a speed of 100kmh on Inglis Street at the start of the pursuit, the pursuit would have been terminated. The weight of the evidence supports a finding that the HiAce van was in fact travelling at that speed on Inglis Street during this time. I further note that Forensic Officer Shearwood also estimated that the police vehicle was travelling at an average speed of 85.68 kmh during this time.
241. I consider it necessary therefore given all these matters that police vehicles should be fitted with appropriate equipment to undertake pursuits, such that estimations of speed are improved, to maximise the mitigation of risks.
242. There was agreement by police (at least with the benefit of hindsight) that matters which were relevant to risk assessments were not communicated to the pursuit controller. This included that there was a passenger in the HiAce van (who moved to the rear of the vehicle at one stage), there had been at least one incident of erratic driving during the pursuit (such as travelling on the wrong side of a traffic island causing a truck to stop) and an earlier incident of erratic driving prior to the to the start of the pursuit (at the Crossroad Hardware). This was in addition to an inaccurate reason for the pursuit being broadcast.
243. I note that any communication inadequacies during a pursuit have the potential to adversely affect the decision making process of the pursuit controller. In this case the pursuit controller said that it would have been helpful to know these matters, although he would not necessarily require information on *what's happened in the past* and that he had sufficient information to make a risk assessment.
244. The pursuit policy however says that the observer *must communicate the reason for the pursuit, speed, direction, environmental conditions, vehicle description and any other relevant information, and maintain constant radio communications.*
245. Whilst acknowledging that task loading in a pursuit and the busyness of radio communications may affect the quality of the information broadcast, these are well known issues in a pursuit, and it is therefore not clear how the policy requirement sits in this operational environment.

246. I consider therefore that Victoria Police should examine ways to improve the operational conditions or environment of a pursuit given that these well-known issues, which have been highlighted in earlier coronial investigations, have the potential to affect risks assessments with detrimental consequences.
247. Further to this, whilst there was a general comment that the HiAce van's erratic driving came as a surprise whilst on the Western Freeway it was evident that it was not his first incident of erratic driving. Counsel for the CCP did however consider that the driving on the Western Freeway was of *an entirely different class*. I note however the police commentary on those earlier incidences included, *It was fortunate that no cars came at the time as he would have hit them head on and it could have been a collision if the truck hadn't have seen*. Counsel Assisting submitted that a *prudent and cautious approach would have been to terminate the pursuit when the van did turn the wrong way through the roundabout*. There is no doubt that termination at that point was an option open to police.
248. The Police members in this case said that they were aware of the requirements of the pursuit policy and stated that they were constantly undertaking risk assessments, and that the risk being addressed outweighed the risks of the pursuit. Whilst appearing relatively simple, unravelling what that meant in the context of this case was not straightforward.
249. The *serious risk to the health or safety of a person* which existed before the interception was based on the Nerinna offending – an attempted aggravated burglary which is an indictable offence (the circumstance of aggravation being that there were persons present at the time of the attempted offending). The policy is not prescriptive and guidance given to police in the interpretation of the policy says that an aggravated burglary can fit within the criteria. There is no doubt however that the offending fell on the lower end of the scale.
250. In addition, whilst some police considered that the driver of the HiAce van may have been Mr Cairns or part of a cohort whose offending behaviour was similar to that of Mr Cairns, this was also problematic as this group were known for their erratic and dangerous driving and were certainly not known for complying with police directions. And, as it transpired this risk was unfortunately realised, as Mr Cairns was the driver, he was unlikely to ever stop and his dangerous driving led to the fatal incident.
251. Not knowing who the driver was however meant that there was not alternate means to apprehend the driver which satisfied the policy. And as already noted given the passage of time, limited evidence was available in relation to whether there was any planning before

the interception, although it was noted to be part of usual practice. I agree with Counsel Assisting that in those circumstances the policy would have permitted interception of the HiAce van.

252. Moving to the assessment of risks as outlined in the policy, it was generally acknowledged by police (as well as counsel for the CCP) that the risks of the pursuit itself tended to fall in the higher end with risks such as young driver (and passenger), an alcohol or drug affected driver, the driver being unauthorised, the driver being a wanted suspect and it being a stolen vehicle fitted with stolen number plates. Counsel for CCP said during submissions, *Those features are more than likely constant, regardless of the environment through which the vehicle is moving.*
253. There was also no evidence as the pursuit continued, that the driver of the HiAce van intended to stop and I was concerned in those circumstances that there was a risk of the driving behaviour becoming more desperate and heightening over time. Police said that this was factored into their assessment of risks and I note that the policy is silent on this matter.
254. An analysis of the circumstances therefore reveal on the basis of what was known at the time of the pursuit, that the seriousness of the harm to be prevented was low and the risks associated with the pursuit were high. As already noted, even if one considered the driver was Mr Cairns or someone with a similar offending profile this may have raised the level of harm but could also raise the risks given the known dangerous and erratic driving associated with this group. Add to these factors for consideration was whether the pursuit was effective over time.
255. Applying the pursuit policy framework is complex in these circumstances and it is clear that the policy could have been interpreted with a different outcome on this day. The policy (paragraph 138) and training (paragraph 222) supports police forming different views or making different assessments.
256. Counsel Assisting submitted that when the pursuit was initiated the risks did fall on the higher side of the spectrum and in the light of the presence of those risks, it would be open to find that *a more cautious approach would have dictated that it not be initiated.* In making that submission she noted that whilst the policy identified various factors to be weighed by the members for the purpose of the risk assessment, the risk assessment itself is *subjective*, and therefore different members will have views about what is safe and not safe. Counsel for the CCP agreed with the analysis but not with her submission that a more *cautious approach*

would have dictated a different decision, as this implied that the police failed to *exercise necessary caution*. I note that Counsel Assisting did not submit that the police actions failed to comply with the applicable policy, noting that risk assessments are *subjective*, and I agree with that assessment. It is not possible in these circumstances to say that an individual police officer should or should not have done something different.

257. The driver of the police vehicle in this case generally referred to lower risks such as the road conditions, the weather, the amount of traffic (including pedestrians), the capacity of the HiAce van and the manner and speed the van was travelling in his statement, which are all proper matters to consider. The consistent known (or presumed to be known) higher risks were of a young substance affected driver (with a passenger) who was wanted and driving a stolen vehicle (with stolen number plates), whose driving was not without incident. As already highlighted, the behaviour of a driver being pursued is highly unpredictable.
258. I understand that the majority of pursuits conducted in Victoria end without incident. Coroners however see the cases that don't. It is from the learnings of these cases, that an emphasis on caution and the consideration of the higher risks in the application of any risk assessment is favoured and encouraged.
259. I consider therefore that Victoria police training should ensure that there is an emphasis on how higher risk factors are given consideration in the application of the Risk assessment and decision making guide, in order to minimise the risks associated with pursuits.

## **RECOMMENDATIONS**

260. Pursuant to section 72(2) of the Act, I make the following recommendations:
- (i) Police vehicles should be fitted with appropriate equipment to undertake pursuits such that estimations of speed are improved, to maximise the mitigation of risks.
  - (ii) Victoria police should examine ways to improve the operational environment of a pursuit in circumstances where well known issues such as, task loading and the limitation with radio communications, have the potential to affect risks assessments with detrimental consequences.
  - (iii) Victoria police training should ensure that there is an emphasis on how higher risk factors are given consideration in the application of the Risk assessment and decision making guide, in order to minimise the risks associated with pursuits.

## FINDINGS

261. Pursuant to section 67(1) of the Act I find as follows:

- (a) the identity of the deceased was Jacqueline Isabella Vodden born on 5 May 2001;
- (b) who died on 19 September 2017 on Western Freeway, Ballan, Victoria, from *Multiple injuries (head, chest, pelvis and left femur)*; and
- (c) the death occurred in the circumstances described above.

262. I convey my sincere condolences to Jacqueline's family for their loss and acknowledge the heartbreaking circumstances in which her death occurred.

263. Pursuant to section 73(1) of the Act, I order that this finding be published (in redacted form) on the Coroners Court of Victoria website in accordance with the rules.

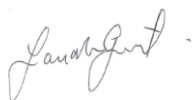
264. I further direct that a copy of this finding be provided to the following:

Naomi Vodden and Scott Vodden, Senior Next of Kin

Victorian Government Solicitors Office on behalf of the Chief Commissioner of Police

Detective Sergeant Christian Von Tunk, Coroner's Investigator, Victoria Police

Signature:



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Coroner Sarah Gebert

Date: 14 March 2023

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NOTE: Under section 83 of the *Coroners Act 2008* ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.

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