



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2019 003774

FINDING INTO DEATH FOLLOWING INQUEST

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

INQUEST INTO THE DEATH OF BETTY TORRANCE SLOAN

Findings of:	Coroner David Ryan
Delivered on:	7 September 2023
Delivered at:	Coroners Court of Victoria 65 Kavanagh Street, Southbank, Victoria
Inquest hearing dates:	12 & 13 July 2023
Counsel Assisting the Coroner:	Lindsay Spence, Principal In-House Solicitor, Coroners Court of Victoria
Chief Commissioner of Police:	Sarala Fitzgerald of Counsel instructed by the Victorian Government Solicitor's Office
Keywords:	Police pursuit – Urgent Duty Driving

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INTRODUCTION

1. On 19 July 2019, Betty Torrance Sloan was 86 years old when she died at the Alfred Hospital in Melbourne after having suffering serious injuries on 17 June 2019 when the car in which she was a passenger was hit by another car being driven by Ryan Tulloch in Box Hill South.
2. Mrs Sloan’s husband, Ian Sloan, who was driving the car at the time it was involved in the collision, has also since passed away. They are survived by their three children and five grandchildren.

CRIMINAL PROCEEDINGS

3. Mr Tulloch was charged and pleaded guilty in the Supreme Court of Victoria to the offence of culpable driving causing death and other offences. On 22 June 2022, he was sentenced by Justice Niall to eleven years’ imprisonment with a non-parole period of 7 years and 6 months.

CORONIAL INVESTIGATION

Jurisdiction

4. Mrs Sloan’s death constitutes a “*reportable death*” under ss 4(1)(b) and 4(2)(a) of the *Coroners Act 2008 (the Act)*, as her death occurred in Victoria as a result of accident or injury. The holding of an inquest was not mandatory under the Act but I determined pursuant to s 52(1) of the Act that it was appropriate for an inquest to be held in the exercise of my discretion.
5. The Coroners Court of Victoria is an inquisitorial court.¹ The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.

¹ Section 89(4) of the *Act*.

6. The cause of death refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
7. The circumstances in which the death occurred refers to the context or background and surrounding circumstances of the death. It is confined to those circumstances that are sufficiently proximate and causally relevant to the death.
8. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the prevention role.
9. Coroners are empowered to:
 - (a) report to the Attorney-General on a death;²
 - (b) comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice;³ and
 - (c) make recommendations to any Minister or public statutory authority or entity on any matter connected with the death, including public health or safety or the administration of justice.⁴
10. These powers are the vehicles by which the prevention role may be advanced.
11. It is important to stress that coroners are not empowered to determine civil or criminal liability arising from the investigation of a reportable death. Further, they are specifically prohibited from including a finding or comment, or any statement that a person is, or may

² Section 72(1) of the Act.

³ Section 67(2) of the Act.

⁴ Section 72(2) of the Act.

be, guilty of an offence.⁵ It is also not the role of the coroner to lay or apportion blame, but to establish the facts.⁶

12. The standard of proof applicable to findings in the coronial jurisdiction is the balance of probabilities and I take into account the principles enunciated in *Briginshaw v Briginshaw*.⁷

CIRCUMSTANCES IN WHICH DEATH OCCURRED

13. Overnight on 12 June 2019, a silver 1997 Subaru Liberty sedan (**the Subaru**) was stolen from a street in Noble Park. Mr Tulloch was subsequently found guilty of theft in relation to this vehicle.
14. At around 10.30am on 17 June 2019, while driving the Subaru, Mr Tulloch collided with the rear of a stationary vehicle in Camberwell. Mr Tulloch then reversed, drove past the stationary vehicle on the wrong side of the road and drove into a side street at excessive speed.
15. At around 11.08am on 17 June 2019, Mr Tulloch arrived at the BP petrol station on the corner of Canterbury Road and Station Street, Box Hill South and attempted to fill the tank of the Subaru with fuel. The station attendant considered that Mr Tulloch was acting suspiciously and a check on vehicle registration disclosed that the Subaru had been reported stolen. She subsequently informed Mr Tulloch over the loudspeaker system that he was required to prepay for his fuel. Mr Tulloch then immediately returned to the driver's seat of the Subaru.
16. At the time that Mr Tulloch returned to the Subaru, Senior Constable Richard Bower and Detective Senior Constable Damian Coutts (**Whitehorse 517**) had just arrived at the petrol station in an unmarked vehicle and they formed the view that Mr Tulloch "*had*

⁵ Section 69(1) of the Act. However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions if they believe an indictable offence may have been committed in connection with the death. See sections 69(2) and 49(1) of the Act.

⁶ *Keown v Khan* (1999) 1 VR 69.

⁷ (1938) 60 CLR 336.

filled the vehicle with petrol and was attempting to leave without paying". SC Bower exited his vehicle and ran to the driver's side of the Subaru yelling "*Police, stop!*"⁸

17. While SC Bower and DSC Coutts gave chase on foot, Mr Tulloch reversed the Subaru out of the petrol station onto Canterbury Road. He continued to travel east along Canterbury Road in reverse for approximately 100 metres before he collided with a pole on the north side of the road. He then turned the Subaru around and proceeded to drive forwards in an easterly direction along Canterbury Road, "*accelerating to an extremely fast speed and moving between multiple lanes in a very erratic and dangerous manner...reaching a speed of approximately 90kph*".⁹
18. Senior Constable Matthew King, who was not on duty and driving his vehicle at the time, observed Mr Tulloch reversing out of the BP petrol station while he was in westbound stationary traffic on Canterbury Road at the intersection of Station Street. He performed a U-turn and followed the Subaru "*for approximately 10 seconds, and in this time I saw it drive onto the wrong side of the road. The vehicle almost collided into two civilian vehicles. In the recording you can see it almost collided into a white van*".¹⁰
19. SC King "*assumed the driver would have thought I was following them so I stopped following as I believed this would have been the safest option*". He recorded the Subaru accelerating down Canterbury Road on his mobile phone and obtained the vehicle's registration number which he subsequently passed onto police, including SC Bower and DSC Coutts.¹¹
20. At 11.11am, DSC Coutts broadcasted an urgent call over the police radio to alert surrounding units of the incident and the fleeing Subaru. The Subaru was identified as a stolen vehicle and SC Bower identified the driver as Mr Tulloch, which was also broadcast over the radio.
21. Senior Constables Tibor Hernyak and Adelina Pugliese (**Nunawading 636**) from the Highway Patrol were in a blue unmarked Holden sedan at McClares Road, Vermont when they heard DSC Coutts' urgent broadcast. They subsequently headed west along Canterbury Road towards the BP petrol station with SC Hernyak driving and SC Pugliese acting as observer.

⁸ CB74.

⁹ Statement of Senior Constable Bower dated 5 September 2019, CB75.

¹⁰ CB86-CB87.

¹¹ CB86-CB87.

22. Nunawading 636 arrived at the BP petrol station without having seen the Subaru. SC Hernyak then turned around and drove east along Canterbury Road. Between Hay Street and Middleborough Road, SC Hernyak sighted the Subaru *“travelling west along Canterbury Rd, at a fast speed which I estimated at 80-90kmh”* in a 60 kilometre per hour zone. SC Hernyak performed a U-turn adjacent to Wembley Park and headed back towards the BP petrol station, travelling at around 80 kilometres per hour, while SC Pugliese transmitted their sighting on the radio.¹²
23. SC Hernyak also heard the Forest Hill 251 (Acting Sergeant Mark Dunbabin) request the assistance of a police helicopter (**Polair**) which *“indicated to me that the VOI¹³ either needed to be followed and/or observed until the police helicopter was able to adopt an aerial observation platform”*.¹⁴
24. While Nunawading 636 were driving back towards the BP petrol station, A/Sgt Dunbabin transmitted the following over the radio:
- “Yeah, Forest Hill 251. If I can just give a direction. Any units are – that sees this vehicle...If they see them, don’t attempt to intercept. Come up with the location and we’ll attempt to get Polair and formulate a plan first. They’re already driving like clowns so don’t want them doing anything stupid again”*.¹⁵
25. When Nunawading 636 arrived at the intersection of Canterbury Road and Station Street, they passed Whitehorse 517’s unmarked white Holden Commodore which was parked east of the BP petrol station, and SC Hernyak observed that *“it had its emergency lights activated”*.¹⁶ While Nunawading 636 was waiting in stationary traffic at the intersection, they observed the Subaru pull out onto the wrong side of the road in front of them and turn left against the red traffic light onto Station Street.

¹² CB91.

¹³ Vehicle of Interest

¹⁴ CB91.

¹⁵ CB242.

¹⁶ CB92; T23.

26. SC Hernyak then activated his emergency lights and siren and after he and SC Pugliese ensured it was safe to do so, he followed the Subaru around the corner. Seven seconds separated the two vehicles at this time.¹⁷ They were followed a few seconds later by Whitehorse 517. There were two other vehicles which had crossed the intersection along Station Street which were driving between the Subaru and Nunawading 636.
27. When Nunawading 636 turned onto Station Street and accelerated up the incline in the road, SCs Hernyak and Pugliese could not see the Subaru ahead of them. SC Hernyak accelerated to a speed of approximately 80-100kmh before reaching the crest of the incline about 500 metres later. He then saw the Subaru *“about 200-300 metres ahead travelling at a fast speed, which I estimated to be about 100kmh. There was no other traffic on the road, besides parallel parked cars on the east side, near a group of shops”*.¹⁸ In response to an inquiry over the radio from A/Sgt Dunbabin as to whether they were *“in pursuit”*, SC Pugliese responded that *“We’re in pursuit”*.¹⁹
28. As it approached the intersection of Station Street and Riversdale Road, SCs Hernyak and Pugliese observed that the Subaru crossed to the wrong side of the road *“entering a turning slip lane, dedicated to left turning cars from Riversdale Rd to travel north on Station St”* before turning right into Riversdale Road. When he saw the Subaru cross onto the wrong side of the road, SC Hernyak stated that he then *“instantly started slowing down”* and turned into Riversdale Road.
29. After hearing SC Pugliese transmit that the Subaru had travelled to the wrong side of the road before turning right into Riversdale Road, A/Sgt Dunbabin directed Nunawading 636 to terminate the pursuit. SC Pugliese confirmed that they had terminated the pursuit and SC Hernyak then turned off the emergency lights and siren and pulled over.²⁰

¹⁷ CB512-CB515; Exhibit 8.

¹⁸ CB92.

¹⁹ CB244.

²⁰ CB244-CB245.

30. As Mr Tulloch continued to speed west along Riversdale Road towards the intersection of Elgar Road, he lost control of the Subaru, which spun into the path of a VW Polo sedan being driven by Mr Sloan east along Riversdale Road. Mrs Sloan was a front seat passenger and their daughter Jennifer was a passenger in the rear of the VW. All three occupants were seriously injured in the collision and were transported to the Alfred Hospital for treatment.
31. Mrs Sloan sustained significant chest injuries in the collision which were complicated by the development of delirium and hospital acquired pneumonia. Her condition continued to deteriorate in hospital and she passed away on 19 July 2019.
32. Mr Tulloch received treatment for minor injuries before being arrested, interviewed and charged with theft and driving offences. He was unlicensed, had methylamphetamine in his system²¹ and disclosed that he had been on a three day “*drug binge*”.

OTHER INVESTIGATIONS

33. Section 7 of the Act requires the coroner to liaise with other investigative authorities and to not unnecessarily duplicate inquiries and investigations.
34. Victoria Police convened a panel to conduct a Divisional Driving Review (**DDR**) of the circumstances leading to Mrs Sloan’s death. It produced a report dated 22 October 2019.
35. The panel made the following relevant findings:
 - (a) The directions, command and control of the incident by A/Sgt Dunbabin were in line with management and policy expectations.
 - (b) It could not determine with any degree of certainty whether Mr Tulloch was aware of the presence of Nunawading 636.

²¹ 0.05mg/L.

- (c) Regardless of whether the incident was an exercise in Urgent Duty Driving by Nunawading 636 or a pursuit, they had justification and the requisite skills and knowledge to engage in a pursuit.
- (d) Due to the manner of driving by Mr Tulloch, the time of day and the volume of traffic, Nunawading 636 could reasonably have believed there was a serious risk to the health and safety of a person which satisfied the need to intercept him.

SOURCES OF EVIDENCE

- 36. Victoria Police assigned Senior Constable David Morris of the Major Collision Investigation Unit to be the Coroner's Investigator for the investigation into Mrs Sloan's death. The Coroner's Investigator conducted inquiries on my behalf and prepared a Coronial Brief including relevant CCTV, the report of the DDR and statements from the forensic pathologist, witnesses to the collision on 17 June 2019 and various police members.
- 37. The inquest ran over two days and evidence was given by the following witnesses:
 - (a) Senior Constable Tibor Hernyak;
 - (b) Senior Constable Adelina Pugliese; and
 - (c) Acting Sergeant Mark Dunbabin.
- 38. This finding is based on the evidence heard at the inquest, as well as the material in the Coronial Brief, material tendered during the inquest and the submissions made by counsel assisting and the Chief Commissioner of Police following the conclusion of the evidence. I will refer only to so much of the evidence as is relevant to comply with my statutory obligations and for narrative clarity.

SCOPE OF THE INQUEST

39. The following issues²² were investigated at inquest:
1. The factual circumstances and appropriateness of any decisions by Nunawading 636 to follow the vehicle being driven by Mr Tulloch and attempt to intercept it;
 2. The factual circumstances and appropriateness of any decision by Nunawading 636 to commence a pursuit of the vehicle being driven by Mr Tulloch; and
 3. Whether any decision to commence a pursuit complied with the Victoria Police pursuit policy and procedures at the time of the incident.

IDENTITY OF THE DECEASED

40. On 19 July 2019, Betty Torrance Sloan was visually identified by her son, Michael Ian Sloan.
41. Identity is not in dispute and requires no further investigation.

MEDICAL CAUSE OF DEATH

42. On 23 July 2019, Dr Joanna Glengarry, Forensic Pathologist at the Victorian Institute of Forensic Medicine performed an autopsy upon Mrs Sloan's body and prepared a report of her findings dated 10 November 2019.
43. Dr Glengarry noted that Mrs Sloan had sustained significant chest injuries in the collision, including a fracture of the sternum and rib fractures that required an admission to the Intensive Care Unit. It was also noted that she suffered spinal fractures and lower and upper limb fractures.

²² These issues were drawn from the scope of the inquest which was identified at the directions hearing conducted on 14 March 2023 and later refined after discussions with the legal representatives of the Chief Commissioner of Police.

44. Dr Glengarry formulated the cause of death as “*1(a) Bronchopneumonia complicating chest injuries sustained in a motor vehicle collision in a woman with chronic aspiration pneumonia*”.
45. I accept Dr Glengarry’s opinion.

PURSUIT

Policies & guidelines

46. Section 2.1 of the Victoria Police Manual (**VPM**) chapter on Pursuits provides that unless safer options exist, members should attempt to intercept any vehicle that is creating a significant risk to any person’s safety, either by speed or manner of driving, by giving the driver a direction to stop at the first available opportunity.
47. The following relevant provisions are contained in the VPM in relation to Urgent Duty Driving (**UDD**):
 - UDD is when a police member drives a police vehicle in such a manner that requires them to breach one or more of the provisions of the *Road Safety Road Rules 2009* in order to respond to an incident or to carry out their duties as a police member.
 - A police member’s duty to protect life and property will always have primacy over the need to arrest offenders, especially when the offence involved is relatively minor, or where there are safer options other than immediate arrest. Any decision to cease UDD on the grounds of avoiding an unacceptable risk will be supported. Any action taken to limit the risks to public, including offender/s, and police will be viewed as a decision that displays sound professional judgement.
 - Police members need to be mindful that as soon as a driver fails to comply with a direction to stop, or engages in deliberate action to avoid being stopped, this is a pursuit.

- Regardless of whether there is a breach of the *Road Rules* or not, a pursuit is always considered UDD.
- The driver considering initiating a pursuit must assess the risks and reasons for the pursuit, having regard to VPM Pursuits; if the risks outweigh the results to be achieved, they must terminate the pursuit.
- The types of situations that may require UDD will generally be, but are not limited to:
 - Responding to an incident requiring immediate police attention;
 - Active involvement in traffic enforcement, or the interception of a vehicle for an offence; and
 - When engaged in a pursuit.

48. The VPM defines a pursuit as follows:

- A pursuit occurs when a police vehicle continues to follow a vehicle that:
 - Has failed to comply with a member's direction to stop; or
 - Is taking deliberate action to avoid being stopped.

49. Section 2.4 of VPM Pursuits provides that where a driver fails to stop after a direction to stop is given or the member believes the driver is taking deliberate action to avoid being stopped, the member must determine the most appropriate action to take and either;

- Discontinue the attempted intercept and not follow the vehicle; or
- Conduct a pursuit if the pursuit justification criteria are met.

50. Section 3.2 of VPM Pursuits identifies the criteria for the justification of a pursuit as follows:

- Members may only conduct a pursuit when they reasonably believe a serious risk to health or safety of a person existed 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 the time.
- When assessing whether alternative responses to immediate apprehension are practicable, considerations include 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.
- All members involved in the pursuit must apply the *Risk assessment and decision making guide* at section 3.4 when conducting a pursuit. Any member involved can terminate the pursuit.

51. The Chief Commissioner submits that the interpretation of the second limb of the definition of “*pursuit*” in VPM Pursuits ought to be limited to circumstances where a police vehicle continues to follow a vehicle that is taking deliberate action to avoid being stopped *by that vehicle*. Otherwise, the Chief Commissioner submits that an unreasonable outcome eventuates, that is “*a police vehicle will be considered in pursuit when it is*

*following a vehicle without that driver's knowledge, merely because the driver is taking deliberate action to avoid being stopped **by anyone***".²³

52. I do not accept that the definition of "pursuit" in VPM Pursuits should be limited in the way proposed by the Chief Commissioner. To do so is not consistent with the underlying objective in the policy to limit risks to the community, other road users, the occupants of pursued vehicles and police members. The driver of a vehicle who is taking deliberate action to avoid being stopped creates a risk which may be escalated if a police vehicle continues to follow it. This risk exists, and may be escalated, notwithstanding that the source of the offending driver's deliberate action to avoid being stopped may have been triggered by a vehicle other than the following police vehicle.
53. Further, the offending driver may not be initially aware of the following police vehicle, but there is a risk that they *will* become aware of it, which has the potential to then rapidly escalate their driving behaviour and increase the risk to the public. It is appropriate in these circumstances for police in the following vehicle to actively consider the pursuit criteria in accordance with the policy when deciding whether to continue to follow the offending vehicle.

THE DECISIONS TO FOLLOW THE SUBARU

54. The decision by SC Hernyak to follow the Subaru after initially sighting it travelling west on Canterbury Road was reasonable and appropriate given the urgent broadcast they had heard by DSC Coutts. Nunawading 636 remained covert at this stage as their vehicle was unmarked and they had not activated their siren or forward-facing emergency lights.
55. The decision by Nunawading 636 to activate their emergency lights and siren and follow the Subaru onto Station Street was justified by them as an act of UDD.²⁴ This decision was made after they had both heard the broadcast of A/Sgt Dunbabin's direction not to attempt to intercept the Subaru.²⁵ Although he heard the direction, SC Hernyak stated he was not clear as to whether they ought to "*pursue in order to intercept or to*

²³ Submission of the Chief Commissioner Police, [28].

²⁴ T37; T125.

²⁵ T29; T117.

monitor/observe".²⁶ SC Pugliese stated that their purpose was to "*keep an eye on the offending vehicle until we had Polair available or above us*".²⁷

56. SC Hernyak stated in evidence that "*the whole incident started with him taking deliberate action*" and he agreed that "*throughout the whole incident*" Mr Tulloch's "*entire course of conduct was that he was taking deliberate action to avoid being stopped*" including while travelling on Station Street.²⁸ SC Pugliese also gave evidence that she had formed the view based upon Mr Tulloch's driving behaviour that he was not going to stop for police.²⁹ I also consider it possible that Mr Tulloch observed the emergency lights which were activated on Whitehorse 517's vehicle when he passed it on Canterbury Road just before he turned into Station Street. This may have influenced his decision to turn into Station Street against the red traffic signal.
57. I am satisfied that Nunawading 636 was not attempting to intercept the Subaru when they followed it into Station Street and they did not consider that they were commencing a pursuit at this stage. SCs Hernyak and Pugliese both gave evidence that they were not giving Mr Tulloch a direction to stop when they activated their emergency lights and siren and followed the Subaru around the corner.³⁰
58. Further, there is no evidence that Nunawading 636 considered that the Subaru was taking deliberate action to avoid being stopped *by them* in the isolated action of turning into Station Street, and their evidence was that Mr Tulloch was unaware of their presence at that stage. I accept that their actions at this stage constituted UDD, but I also consider that they objectively constituted a pursuit given that they continued to follow the Subaru which was taking deliberate action to avoid being stopped.

²⁶ CB96; T43.

²⁷ T128.

²⁸ T64; T74.

²⁹ T129; T160.

³⁰ T44; T129-T130.

59. Another option available to Nunawading 636 at this stage, given A/Sgt Dunbabin's direction, was to stay in traffic, remain covert and turn left onto Station Street when the lights turned green. A/Sgt Dunbabin stated in evidence that he would have supported such an option in the circumstances.³¹ Alternatively, they could have deactivated their lights and siren once they turned the corner so as to minimise the risk of Mr Tulloch becoming aware of their presence further along Station Street.

THE DECISION TO COMMENCE A PURSUIT

60. SC Hernyak resighted the Subaru on Station Street as he was coming over the crest of the hill between Duncan Street and Kingswood Rise. SC Pugliese resighted the Subaru when they were near Devon Street and it was "*approximately 200 metres ahead of us travelling at a fast rate of speed*".³²

61. I accept that Nunawading 636 never made a conscious decision to attempt to intercept the Subaru after it had turned into Station Street. In SC Hernyak's view, "*I didn't get close enough to him to attempt an intercept*".³³

62. I also accept that they honestly believed that Mr Tulloch was never aware of their presence, although in hindsight, SC Hernyak agreed that this was a "*dangerous conclusion to be making*".³⁴ Although they could not see the Subaru when they turned into Station Street, there was always the risk Mr Tulloch would become aware of their presence once they reached the top of the hill with their siren and lights activated. Notwithstanding their subjective view, I consider it is possible that Mr Tulloch *was* aware of Nunawading 636's presence at some stage as he travelled along Station Street, and it was dangerous to conclude he was unaware of their presence, for the following reasons:

- They had their lights and siren activated the entire time that they travelled along Station Street;

³¹ T193.

³² CB99.

³³ T44.

³⁴ T85.

- They were only 7 seconds behind the Subaru when they turned into Station Street;
 - They were only 6 seconds behind the Subaru when they travelled past Dryandra Cellars which was 800 metres from Canterbury Road;
 - Mr Tulloch would have had a clear line of sight of Nunawading 636 soon after they crested the rise on Station Street noting that by the time they passed Dryandra Cellars, there were no vehicles between them and the Subaru; and
 - Mr Tulloch crossed to the wrong side of the road on Station Street to turn into Riversdale Road.
63. Although it is possible that Mr Tulloch was aware of Nunawading 636's presence at some stage along on Station Street, the evidence does not enable me to conclude that he was in fact aware of their presence. The Court has no evidence from Mr Tulloch as to his state of mind on 17 June 2019 and his driving throughout the day was dangerous, unpredictable and erratic. I am unable to isolate with any degree of certainty exactly what events may have precipitated that behaviour.
64. SC Pugliese broadcast over the radio to A/Sgt Dunbabin that they were "*in pursuit*" of the Subaru at around the time that she resighted it near Devon Street.³⁵ She made this broadcast because, although she could not hear clearly, she thought that she had heard SC Hernyak say to her "*come up in pursuit*".³⁶ SC Hernyak did not recall making that statement but did recall asking SC Pugliese to "*clarify if we need to be in pursuit*".³⁷ He conceded that there was confusion between himself and SC Pugliese in relation to whether a pursuit should have been called.³⁸ SC Pugliese conceded that it would have been prudent to have clarified what SC Hernyak had said prior to broadcasting that they were "*in pursuit*".³⁹

³⁵ T139.

³⁶ T139-T141.

³⁷ T45.

³⁸ T60; T64.

³⁹ T141.

65. SCs Hernyak and Pugliese stated that although they had technically announced that they were engaged in a pursuit, they were not actually pursuing the Subaru.⁴⁰
66. I am satisfied that Nunawading 636 commenced a pursuit in relation to the Subaru both in form and substance when SC Pugliese broadcast that they were “*in pursuit*” as they were continuing to follow the Subaru with their lights and siren activated in circumstances where Mr Tulloch was taking deliberate action to avoid being stopped. This was not in compliance with A/Sgt Dunbabin’s direction to not attempt to intercept the Subaru, which also entails a direction to not engage in a pursuit.⁴¹

COMPLIANCE WITH RELEVANT POLICIES AND PROCESSES

67. I am satisfied that A/Sgt Dunbabin complied with Victoria Police policy in his supervision of the incident and in his performance of the role of Pursuit Controller. Given the information that had been provided to him over the police radio about Mr Tulloch’s driving behaviour, his identity and the availability of relevant resources, his direction to members not to intercept the Subaru was reasonable and appropriate. He was clearly concerned that any further police contact had the potential to significantly aggravate Mr Tulloch’s driving.⁴² Accordingly, he was actively engaged in coordinating alternative resolution strategies including utilising Polair.
68. I am satisfied that Nunawading 636’s pursuit of the Subaru once they reached the crest of the hill on Station Street was not in compliance with Victoria Police policy.
69. There is no evidence that Nunawading 636 turned their mind to the pursuit justification criteria either prior to or after the pursuit broadcast.⁴³ They did not assess the risks and reasons for the pursuit of the Subaru and did not actively consider whether the risks outweighed the results to be achieved.

⁴⁰ T73; T141-T142.

⁴¹ T191-T192; T184.

⁴² T185-T186.

⁴³ T67; T145.

70. Nunawading 636 conceded that:

- Based on all the information available at the time, there was not a serious risk to the health or safety of a person;⁴⁴
- Therefore the pursuit justification criteria was not met;⁴⁵ and
- A pursuit should not have been conducted.⁴⁶

71. Nunawading 636 further conceded that there were alternative responses to immediate apprehension of Mr Tulloch given his identity was known and Polair had acknowledged and were responding to the job.⁴⁷

72. I accept that Nunawading 636 did not consider that they were engaged in a substantive pursuit of the Subaru which provides an explanation as to why they did not actively consider the pursuit criteria in the VPM. Nevertheless, a pursuit was broadcast over the radio, and I am satisfied on the evidence that they were in fact engaged in a pursuit.

FINDINGS AND CONCLUSION

73. I am satisfied that Mr Tulloch's driving behaviour on 17 June 2019 was influenced at various stages by his awareness of nearby police and his motivation to avoid apprehension. However, his driving throughout the day was erratic, unpredictable, reckless and dangerous and I consider that this was the case even when police were not nearby and he was unaware of their presence. I am unable to be satisfied in the circumstances as to whether Mr Tulloch's loss of control of the Subaru on Riversdale Road just prior to the collision with Mr Sloan's vehicle was as a consequence, in part, of his efforts to avoid apprehension by police, or as a result of his consistently reckless driving behaviour displayed throughout the day.

⁴⁴ T67-T68; T146-T147.

⁴⁵ T68-T69; T194-T195.

⁴⁶ T69; T73.

⁴⁷ T72; T149

74. I accept that SCs Hernyak and Pugliese were carrying out their duties in good faith in stressful and challenging circumstances. It is clear that events unfolded rapidly without the opportunity for detailed assessment and planning, which is evident in listening to the busy and at times chaotic nature of the police communications. It is understood that the Court is examining the circumstances with the benefit of hindsight but the process provides a valuable opportunity for reflection and review in relation to how pursuit scenarios might be visualised in a training environment so that potential police responses can be planned and explored in advance.
75. Having held an inquest into Mrs Sloan's death, I make the following findings, pursuant to section 67(1) of the Act:
- (a) the identity of the deceased was Betty Torrance Sloan, born on 30 September 1932;
 - (b) the death occurred on 19 July 2019 at the Alfred Hospital, 55 Commercial Road, Melbourne, Victoria;
 - (c) from bronchopneumonia complicating chest injuries sustained in a motor vehicle collision in a woman with chronic aspiration pneumonia; and
 - (d) that the death occurred in the circumstances set out above.

I convey my sincerest sympathy to Mrs Sloan's family.

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

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

Michael Sloan, Senior Next of Kin

Chief Commissioner of Police, c/o the Victorian Government Solicitor's Office

Senior Constable David Morris, Coroner's Investigator

Signature:



Coroner David Ryan

07 September 2023



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 inquest. 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.
