



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2021 0462

FINDING INTO DEATH FOLLOWING INQUEST

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

INQUEST INTO THE DEATH OF JOHN JACOB BEIROUTI

Findings of:	Coroner Simon McGregor
Delivered on:	19 September 2022
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank, Victoria, 3006
Inquest Hearing Dates:	3 May 2022
Counsel Assisting:	Lindsay Spence Principal In-House Solicitor Coroners Court of Victoria
Chief Commissioner of Police:	Laura D'Amico Principal Solicitor Victorian Government Solicitor's Office

I, Coroner Simon McGregor, having investigated the death of John Jacob Beirouti, and having held an inquest in relation to his death on 3 May 2022 at Melbourne, find that:

- the identity of the deceased was John Jacob Beirouti born on 16 May 1977; and
- the death occurred on 24 January 2021 at Stud Road, Dandenong North;
- from 1(a) Multiple Injuries Sustained in a Motor Vehicle Collision (Driver)
- and that the death occurred in the following circumstances:

BACKGROUND:

1. John Jacob Beirouti was born at Dandenong Hospital on 16 May 1977, the first child of Robert and Marianne Beirouti (now separated). John was the older brother to his siblings Sarah, Jason, Daniel and Glen. He grew up in North Dandenong with his family and attended Wooranna Park Primary School participating in Little Athletics with North Dandenong Athletics Club and playing football with North Dandenong Football Club. When his family moved to Endeavour Hills, he then attended Mossgiel Park Primary School and joined Mossgiel Park Football Club.
2. When he was in senior primary school his family relocated to Karratha, Western Australia due to his father being employed with Woodside Offshore Petroleum Refinery. He attended Karratha Primary School and Karratha Senior High School where he completed Year 12. He joined Karratha Kats Football Club and showed promise as a footballer playing as a member of the reserves premiership team and two senior premiership teams. He moved to Fremantle where he was drafted by South Fremantle Football Club and played against the Fremantle Dockers in their inaugural game.
3. Mr Beirouti commenced his career at Woodside Offshore Petroleum Refinery prior to moving to Fremantle however, once his parents separated, he moved back to Melbourne with his mother and siblings. He had a history of illicit drug consumption, using methylamphetamine when he lived in Karratha. Marianne Beirouti gives evidence that *‘when he was on ice, he sounded happy but paranoid. He always thought the police were chasing him for some reason or another. Once he even pointed out a worker on a light post in the street and said, “that’s the Police”.*¹

¹ Statement of Marianne Beirouti, Inquest Brief, p48.

4. He met his first partner in Melbourne in 2012 and they had two children together. He moved with his family to Queensland where he worked as a rigger and scaffolder at several companies including Queensland Alumina Refinery, McConnell Dowell, and Curtis Island LNG. They purchased a house in Gladstone where they lived until they separated in 2016 after which he moved back to Melbourne. During the relationship there were several reports of family violence incidents to police which led to intervention orders being invoked dating back to August 2012. At the time of Mr Beirouti's passing there was an active intervention order that prevented him from having any contact with his first partner or their children. This order had been in place since being issued at Dandenong Magistrates Court on 22 September 2020.²
5. In 2016 following his breakup he commenced a new relationship. During this relationship there were reports of family violence incidents to police which led to intervention orders being invoked dating back to April 2016. At the time of his passing there was an active intervention order that prevented him from having any contact with this partner or her children. This order had been in place since being issued at Ballarat Magistrates Court on 22 October 2019.³
6. In March 2017 Mr Beirouti was sentenced to fulltime imprisonment for family violence offences, burglary and drug related offences. He was released on parole in June 2019.
7. In September 2019 Mr Beirouti met his current partner and they commenced a relationship. Family violence incidents were reported to police in February 2020 however, resulting in a revocation of parole and Mr Beirouti returning to fulltime imprisonment on 24 February 2020. In August 2020 his partner gave birth to their son whilst he was in custody. He was again released on parole on 8 September 2020, charged with family violence offences on 19 October 2020, parole revoked and returned to fulltime imprisonment, his sentence concluding 16 December 2020. At the time of his passing there was an active intervention order that prevented him from attending his partner's residence as well as a range of other conditions. This order had been in place since being issued at Dandenong Magistrates Court on 1 October 2020.⁴

² Interim Family Violence Intervention Order issued 22/09/2020 Dandenong Magistrates Court, Inquest Brief, p280.

³ Final Family Violence Intervention Order issued 22/10/2019 Ballarat Magistrates Court, Inquest Brief, p280.

⁴ Interim Family Violence Intervention Order issued 01/10/2020 Dandenong Magistrates Court, Inquest Brief, p284.

8. In December 2020, Mr Beirouti was released from a correctional facility, and he initially resided with his partner, and their 4-month-old son. In early 2021 Mr Beirouti gained employment as a truck driver for a waste management company collecting hard rubbish in the Box Hill area.⁵
9. In mid-January 2021 the relationship between Mr Beirouti and his partner deteriorated and he moved out and he went to live with his mother, who gives evidence *'he told me that he had started back on the drugs. He said things with his partner weren't working out and he had reverted back to ice. That's why she kicked him out, drugs. When he came back to my home, he was very paranoid and even without telling me, I knew he was taking ice'*.⁶ Mr Beirouti disclosed to his mother that following their breakup, late at night he would drive over to her property and look through the windows to see what she was up to. His mother gives evidence that *'in his mind, he thought she was having an affair. There was no truth in this, but in his mind, it was real'*.⁷
10. Approximately 7.50pm on 16 January 2021 Constable Uren and First Constable (FC) Mehmet attended the partner's residence in response to an alleged family violence incident. Upon attending she informed the officers that Mr Beirouti had attended her address to collect property which she had left at the front of the house. Minutes later she heard a loud noise within her ensuite and located Mr Beirouti who had entered her premises by climbing through the bathroom window. She requested Mr Beirouti to leave, and he walked out the front door, not harming her or the children present.⁸ Despite both a foot patrol of the immediate area followed by a patrol in their divisional van, officers were unable to locate either Mr Beirouti or his vehicle, a Nissan Murano.⁹
11. That evening she indicated that she did not wish to make a statement in relation to the matter¹⁰ at that time after which Constable Uren and FC Mehmet returned to Narre Warren Police Station and completed a family violence report. Constable Uren subsequently placed a whereabouts file in respect of Mr Beirouti detailing the reasons he was of interest and that he was to be arrested when in police contact.¹¹

⁵ Statement of Marianne Beirouti, Inquest Brief, p49.

⁶ Statement of Marianne Beirouti, Inquest Brief, p49.

⁷ Statement of Marianne Beirouti, Inquest Brief, p49.

⁸ Victoria Police Family Violence Report, Inquest Brief, p288.

⁹ Statement of Constable Uren, Inquest Brief, p59.

¹⁰ Statement of Senior Constable Sagoe-Crentsil, Inquest Brief, p61.

¹¹ Statement of Constable Uren, Inquest Brief, p60.

12. Oversight management of this incident was assigned to the Dandenong Family Violence Investigation Unit.¹² On Friday 22 January 2021 Constable Uren received an email from Mr Beirouti's partner stating that she wished to make a statement in respect of his attendance at her premises on the preceding Saturday night and also attached phone video footage of the incident.^{13,14} Within that email she stated *'He also told me he believes that I am conspiring with police, and that police have bugged his phone and are tracking him. To me, he is extremely paranoid and out of control. I would like to make a statement as soon as possible as John's behaviour towards me via text, is escalating and I am afraid for my life. He has recently been stalking me and I am currently locked in my home as I am too afraid to leave unless absolutely necessary'*.¹⁵
13. Marianne Beirouti last saw her son alive the day prior to his passing, giving evidence *'John knew that Police wanted to speak to him about a matter that happened at his partner's house in January. She made a report to Police and told John that they wanted to talk to him. John told me this. That's how I know. John was worried about this because it probably meant he would go back to jail. He was already not allowed to see his two older children that he had with his first partner. Now his current partner was telling John that he wouldn't see their son again. John told me this at about 2.00pm the day before the crash I went out to my sister's house at about 6.00pm John said that he might go out later. He didn't say where. That was the last time I saw John'*.¹⁶
14. Marianne Beirouti remembers her son as *'meaning the world to me. He had his faults, but I loved him dearly. I know his four-month-old son meant the world to John and he loved him dearly, just like I loved John. John did stupid things in his life, but he would never desert his son. He wanted him in his life his son is part of John and John was part of me. John was foolish at times but even though he knew he was most likely going back to gaol; he wouldn't do anything so stupid as to leave his son without a Dad. It's so sad that in the end, that is what happened'*.¹⁷

¹² Statement of Senior Constable Sagoe-Crentsil, Inquest Brief, p61.

¹³ Statement of Constable Uren, Inquest Brief, p60.

¹⁴ Exhibit #42, Inquest Brief.

¹⁵ Email sent by Mr Beirouti's partner to Constable Uren dated 22 January 2021, Inquest Brief, p294.

¹⁶ Statement of Marianne Beirouti, Inquest Brief, p49-50.

¹⁷ Statement of Marianne Beirouti, Inquest Brief, p50.

THE PURPOSE OF A CORONIAL INVESTIGATION

15. Mr Beirouti's death constitutes a '*reportable death*' under the *Coroners Act 2008* (Vic) (**the Act**), as he resided in Victoria¹⁸ and the death appears to have been unnatural and unexpected.¹⁹
16. The jurisdiction of the Coroners Court of Victoria is inquisitorial.²⁰ The role of the Coroner is to independently investigate reportable deaths to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.²¹ Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death.
17. It is not the role of the Coroner to lay or apportion blame, but to establish the facts.²² It is not the Coroner's role to determine criminal or civil liability arising from the death under investigation,²³ or to determine disciplinary matters.
18. The expression "*cause of death*" refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
19. For coronial purposes, the phrase "*circumstances in which death occurred*,"²⁴ refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.
20. 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 Court's "*prevention*" mandate.

¹⁸ Section 4 *Coroners Act 2008*.

¹⁹ Section 4(2)(a) *Coroners Act 2008*.

²⁰ *Coroners Act 2008* (Vic) s 89(4).

²¹ *Coroners Act 2008* (Vic) preamble and s 67.

²² *Keown v Khan* (1999) 1 VR 69.

²³ *Coroners Act 2008* (Vic) s 69 (1).

²⁴ *Coroners Act 2008* (Vic) s 67(1)(c).

21. Coroners are also empowered:

(a) to report to the Attorney-General on a death;²⁵

(b) to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice;²⁶ and

(c) to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.²⁷

These powers are the vehicles by which the prevention role may be advanced.

22. The Victoria Police assigned Detective Acting Sergeant Leigh Miller, Major Collision Investigation Unit (MCIU) to be the Coroner's Investigator for the investigation into Mr Beirouti's death. The Coroner's Investigator conducted inquiries on my behalf and submitted a coronial brief of evidence.

23. This Finding draws on the totality of the material obtained in the coronial investigation of Mr Beirouti's death, that is, the Court File, the Coronial Brief prepared by the Coroner's Investigator, further material obtained by the Court, together with the transcript of the evidence adduced at Inquest and the closing submissions of Counsel.²⁸

24. All coronial findings must be made based on proof of relevant facts on the balance of probabilities.²⁹ The strength of evidence necessary to prove relevant facts varies according to the nature of the facts and the circumstances in which they are sought to be proven.³⁰

²⁵ *Coroners Act 2008* (Vic) s 72(1).

²⁶ *Coroners Act 2008* (Vic) s 67(3).

²⁷ *Coroners Act 2008* (Vic) s 72(2).

²⁸ From the commencement of the Act, that is 1 November 2009, access to documents held by the Coroners Court of Victoria is governed by section 115.

²⁹ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

³⁰ *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [139] per Branson J (noting that His Honour was referring to the correct approach to the standard of proof in a civil proceeding in the Federal Court with reference to section 140 of the *Evidence Act 1995* (Cth); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brennan, Deane and Gaudron JJ).

25. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.³¹ The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals or entities, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

26. Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demands a weight of evidence commensurate with the gravity of the facts sought to be proved.³² Facts should not be considered to have been proven on the balance of probabilities by inexact proofs, indefinite testimony or indirect inferences. Rather, such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.³³

IDENTITY OF THE DECEASED PURSUANT TO SECTION 67(1)(a) OF THE ACT

27. On 27 January 2021, John Beirouti's body was identified by Fingerprint Identification, as per the Identification Report same dated.

28. Identity is not in dispute and requires no further investigation.

MEDICAL CAUSE OF DEATH PURSUANT TO SECTION 67(1)(b) OF THE ACT

29. On 1 February 2021, Dr Iles, Forensic Pathologist at the Victorian Institute of Forensic Medicine performed an external examination upon Mr Beirouti's body. In a report dated 5 February 2021, Dr Iles made the following comments:³⁴

(a) External examination and postmortem CT scan demonstrate extensive chest, facial and pelvic injuries along with long bone fractures.

30. Postmortem toxicology did *not* detect the presence of ethanol however the presence of methylamphetamine and amphetamine *was* detected.

31. Dr Iles formulated the cause of death as

1(a) Multiple injuries sustained in a motor vehicle incident (driver)

32. I accept Dr Iles' opinion.

³¹ (1938) 60 CLR 336.

³² *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

³³ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at pp 362-3 per Dixon J.

³⁴ Statement of Dr Linda Iles, Inquest Brief, p47.

CIRCUMSTANCES IN WHICH THE DEATH OCCURRED PURSUANT TO SECTION 67(1)(c) OF THE ACT

33. On Saturday 23 January 2021 approximately 11.33pm Mr Beirouti rang his mother, Marianne Beirouti and had a 22-minute telephone call. Marianne gives evidence that during that call *'he started off by saying "Hi Mum, the police are chasing me" or something to that effect. I told him to pull over and stop. He started saying "I don't want to go back to gaol". I then told him just to come home'*.³⁵
34. On Sunday 24 January 2021 approximately 1.46am Senior Constable (SC) Miles and FC Scarcella, Prahran Highway Patrol, were travelling north on the Monash Freeway approaching the Toorak Road exit. Officers observed a black Nissan Murano being driven by Mr Beirouti swerve across three lanes and then across a painted traffic island onto the exit ramp almost colliding with a white sedan also travelling on the exit ramp.³⁶ FC Scarcella activated the Police vehicle's lights with the intention of intercepting Mr Beirouti.
35. Mr Beirouti stopped at the red traffic control signals at Toorak Road. FC Scarcella deactivated the vehicle's lights at this time as he did not want anyone else to proceed through the red light.³⁷ Whilst stationary at the intersection SC Miles conducted a registration check on the Nissan Murano which indicated that Mr Beirouti was the registered owner.³⁸
36. After the traffic control signal turned green, Mr Beirouti re-entered the Monash Freeway followed by the Highway Patrol vehicle. Approximately 200 metres from Burke Road, FC Scarcella re-activated the police vehicle's light and sirens. Mr Beirouti ignored the attempted intercept, however, and continued driving at a speed varying between 50 -80km/h.
37. FC Scarcella then drove alongside Mr Beirouti's vehicle on its left-hand side which allowed the officers to confirm that the driver matched the licence photograph of Mr Beirouti. SC Miles then had the following conversation with Mr Beirouti:³⁹

SC Miles	<i>Are you going to pull over?</i>
Mr Beirouti	<i>Nah, I got people chasing me</i>
SC Miles	<i>Pull over then</i>
Mr Beirouti	<i>I got people chasing me</i>
SC Miles	<i>Yeah who? Yeah us?</i>

³⁵ Statement of Marianne Beirouti, Inquest Brief, p48.

³⁶ Statement of Senior Constable Miles, Inquest Brief, p63.

³⁷ Statement of First Constable Scarcella, Inquest Brief, p66.

³⁸ Statement of Senior Constable Miles, Inquest Brief, p63.

³⁹ Statement of Senior Constable Miles, Inquest Brief, p64.

38. The officers formed the opinion that Mr Beirouti was not going to stop and, as they had no grounds to initiate a pursuit, terminated the attempted intercept, deactivated the Police vehicle's lights, and returned to their patrol duties.⁴⁰ The officers intended to make further enquiries the following shift given they had confirmed the identity of the driver.⁴¹ This entire incident between Prahran Highway Patrol and Mr Beirouti was captured on the Highway Patrol vehicle's In-Car Video.⁴²
39. FC Nelson and Constable Smith were rostered to work on the Victoria Police divisional van (callsign Knox 311) commencing at Knox Police Station at 11.00pm on Saturday 23 January 2021. FC Nelson was driving the vehicle, a fully marked Holden Colorado, with Constable Smith as the observer. At approximately 3.33am⁴³ Knox 311 was driving along Ferntree Gully Road (cross-street Clyde St) when it passed the Nissan Murano being driven westbound by Mr Beirouti. Constable Smith conducted a registration check on his IRIS device that indicated the registered owner had an active whereabouts in respect of breach of an intervention order.^{44,45}
40. The two vehicles continued westbound on Ferntree Gully Road approaching the intersection with Stud Road where the traffic control signals were red. At that stage, Mr Beirouti was in one of the left lanes. Knox 311 started to pull alongside it in the lane to the immediate right to establish if the driver matched the registered owner of the vehicle.
41. As the bonnet of Knox 311's vehicle reached the driver's door of Mr Beirouti, he accelerated slowly into the intersection of Stud Road and turned left, breaching the red traffic control signal.⁴⁶ In FC Nelson's opinion *'I thought the movement of the SUV was weird. If it wanted to go left onto Stud Road, it should have been in the left slip lanes. And the way it travelled at such a slow speed through the red light was odd behaviour. My suspicion was that he was substance affected'*.⁴⁷
42. Knox 311 activated its emergency lights and siren and turned left into Stud Rd behind Mr Beirouti. Whilst it was FC Nelson's opinion that both vehicles activated the red-light camera at this intersection, enquiries undertaken with VicRoads have confirmed that was *not* the case and that the cameras at the intersection captured traffic originating on Stud Road and not Ferntree Gully Rd.

⁴⁰ Statement of Senior Constable Miles, Inquest Brief, p64.

⁴¹ Statement of First Constable Scarcella, Inquest Brief, p68.

⁴² Inquest Brief, Exhibit #7.

⁴³ Statement of Constable Smith, Inquest Brief, p90.

⁴⁴ Statement of First Constable Nelson, Inquest Brief, p76.

⁴⁵ Statement of Constable Smith, Inquest Brief, p85.

⁴⁶ Statement of Constable Smith, Inquest Brief, p86.

⁴⁷ Statement of First Constable Nelson, Inquest Brief, p76.

43. At that stage FC Nelson estimated that Mr Beirouti was fifty metres ahead of them and was travelling at approximately 60km/h.⁴⁸ Knox 311 followed Mr Beirouti for just under a kilometre with its lights and siren activated however, in First Constable Nelson's opinion, '*I wasn't sure if the driver was slowing down to pull over or was evading me, as he was travelling so slow*'.^{49,50} Knox 311 then informed D24 Police communications, broadcasting as follows:⁵¹

Knox 311 *Knox 311, sorry to interrupt, but I just tried to intercept a vehicle, registration is Zulu, Tango, X-ray, Zero, Four, One, it's a black Nissan X-Trail we're heading south on Stud Road, it's an active whereabouts on the male driver*

D24 *Received, no pursuit?*

Knox 311 *Negative, I'm still behind him but we're going 60km/h*

D24 *Received, Rowville 251 copy*

Rowville 251 *251 copy that, I'm very south on Stud bordering Dandenong, I'm just about to come out on Brady. What's the whereabouts for and has it taken off, has it actively evaded?*

Knox 311 *Yeah, Knox 311 it's actively evaded but going at the speed limit, it's a whereabouts in relation to a family violence brief held at Narre Warren.*

44. Approaching the intersection of Stud Rd and Fulham Rd further broadcasts occurred:

Knox 311 *Just about to go over Fulham Road, still heading towards Wellington*

Rowville 310 *Rowville 310, we're at Wellington about to come up to Stud*

Knox 311 *Yeah, 311 received, still driving at the speed limit ah ... but crashing reds to evade*

⁴⁸ Statement of First Constable Nelson, Inquest Brief, p77.

⁴⁹ Statement of First Constable Nelson, Inquest Brief, p77.

⁵⁰ Statement of Constable Smith, Inquest Brief, p86.

⁵¹ Transcript of D24 Police Radio Communications, Inquest Brief, p180.

- Rowville 251 *251 copy that, given the family violence offending and the evade, I'm happy to authorise stop sticks for them to be used in a safe manner, let's formulate a plan, so keep the calls coming if you can, if its evading and you're pursuing then we're in a pursuit so see if you can just maintain observations and we'll get him to a point where we can deploy sticks.*
- Rowville 311 *He's just approaching Wellington now, I'm about 200 metres back it's in the far-right hand lane, it's just crashed a red.*
- D24 *Received, and Rowville 251, sorry, do you say we are calling it a pursuit?*
- Rowville 251 *Yeah, 251, we're not justified in pursuing given the active whereabouts, but we can authorise stop sticks given the evade and the risk to the public with the crashing of the reds and the whereabouts for the family violence matters.*
- Knox 311 *For the Rowville 251, Rowville and myself are behind it.*

45. CCTV from McDonalds Rowville (intersection of Stud Rd and Fulham Rd) showed at this intersection, Knox 311 travelling two seconds behind Mr Beirouti's vehicle with its emergency lights deactivated.

46. As Mr Beirouti approached the intersection of Stud Road and Wellington Road, he was observed to increase his speed and commence increasing his distance from Knox 311. Mr Beirouti drove through the intersection of Stud Road and Wellington Road against the red light and at a speed of 94km/h, activating the red-light speed camera.

47. Rowville Victoria Police divisional van (callsign Rowville 310, a fully marked Holden Colorado with Leading Senior Constable (LSC) Abbas as driver and SC Leishman as observer) was stationary at the intersection having headed to the area after hearing D24 broadcasts from Knox 311 and Rowville 251.⁵²

⁵² Statement of Senior Constable Leishman, Inquest Brief, p97.

48. Rowville 310 driven by LSC Abbass activated its emergency lights and made a right-hand turn onto Stud Road against the red arrow, deactivating the emergency lights once he had cleared the intersection. ^{53,54} LSC Abbass then *'looked ahead and observed in the distance of possibly 400 to 500 metres away red taillights, from memory I recall two red taillights disappearing over the crest of Stud Road in the vicinity of Sunshine Street, Rowville. Once I saw these two vehicles disappear over the crest I accelerated and reached speeds between 100-115km/hr on Stud Road at the time I could clearly see up ahead and to the sides as there was no traffic in front of me'*.⁵⁵
49. The red-light speed camera records Mr Beirouti entering the intersection at 3:38:24am, Rowville 310 at 3:38:29am, and Knox 311 at 3:38:38am. Knox 311 activated the camera as it entered the intersection against the red with its emergency lights activated at a speed of 66km/h however it turned its emergency lights off as it travelled through the intersection.
50. CCTV from the Ponds Restaurant (1233 Stud Road) records Mr Beirouti's Nissan Murano driving past at 3:38:33am, Rowville 310 six seconds later at 3:38:39 (emergency lights deactivated) and Knox 311 fifteen seconds later at 3:38:48 (emergency lights deactivated). These separation times are also captured on the CCTV from the Polish House Syrena (1325 Stud Road) and further confirm both Police vehicles still had their emergency lights deactivated.
51. Upon reaching the Rowville Football Club oval (Seebeck Oval) Rowville 310 broadcast that they still had Mr Beirouti's vehicle sighted travelling within the right-hand lane, southbound on Stud Road, approximately 400-500 metres ahead.⁵⁶
52. Mr Beirouti at one stage overtook Mukul Kambok who was driving in the same direction along Stud Road. Mr Kambok estimated that Mr Beirouti *'would have been doing close to 100km/h, I can't say for sure, maybe 90-100. I was doing about 80 and it was I'd say about 20 more than me'*.⁵⁷ Mr Kambok then observed a police vehicle approaching from behind him with its lights activated but without a siren and then *'the police car turned off the red and blue lights and drove past me on the left. They weren't going as fast as the first car, just the same speed as me. As it got in front of me I saw that the lights were now off'*.⁵⁸

⁵³ Statement of Leading Senior Constable Abbass, Inquest Brief, p92.

⁵⁴ Statement of Senior Constable Leishman, Inquest Brief, p97.

⁵⁵ Statement of Leading Senior Constable Abbass, Inquest Brief, p93.

⁵⁶ Statement of Leading Senior Constable Abbass, Inquest Brief, p93.

⁵⁷ Statement of Mukul Kamboj, Inquest Brief, p70.

⁵⁸ Statement of Mukul Kamboj, Inquest Brief, p70.

53. At the same time Rowville 251 (a fully marked Victoria Police Toyota Kluger Field Supervisor's vehicle with Sergeant (SGT) Bourke as driver and Constable Dalton as observer) broadcast that they were currently at the intersection of Stud Road and Brady Road, Dandenong North and had setup a location for the deployment of 'stop-sticks' (tyre deflation device).
54. SGT Bourke gave evidence that on the basis of the D24 transmissions from Knox 311 that he was satisfied '*he had an offender avoiding arrest that is using a vehicle to get away, therefore it met the criteria for deployment of stop-sticks*'.⁵⁹ SGT Bourke continually received updates from the D24 transmissions in respect of the location of Knox 311 and Rowville 310 and therefore the approximate location of Mr Beirouti's vehicle.
55. In SGT Bourke's assessment '*there was minimal to no other vehicle traffic on the road at that point. Having learned that the vehicle was a Nissan X-Trail, I know that to be a medium sized SUV which I would reasonably expect to handle the impact of the stop sticks if it was travelling at 60km/h. I had sufficient resources for a post-deployment response to effect an arrest. It was also a Sunday morning around 3.30am, the weather was warm, and the road was dry. There was street lighting in our vicinity, and I could clearly see about 50 metres up St Road for southbound traffic*'.⁶⁰
56. SGT Bourke observed an oncoming vehicle however realised that it was a smaller sedan that did not match the description of Mr Beirouti's vehicle. Moments later he observed a black SUV travelling towards his location in the outer lane at an estimated speed of 50-60km/h.⁶¹ SGT Bourke deployed the stop-sticks with Mr Beirouti continuing to drive normally once it had passed their location.
57. In SGT Bourke's opinion '*I didn't observe any immediate change in the vehicle's movements. The sticks themselves didn't appear to have moved at all. I didn't hear any loud burst or popping, which is what I was expecting. I thought that based on that, it was an unsuccessful attempt*'.⁶² SGT Bourke pulled the stop-sticks off the road and wound up the rope. He could still see Mr Beirouti's vehicle in the distance that '*appeared just the same as when it passed me*'.⁶³

⁵⁹ Statement of Sergeant Bourke, Inquest Brief, p104.

⁶⁰ Statement of Sergeant Bourke, Inquest Brief, p106.

⁶¹ Statement of Sergeant Bourke, Inquest Brief, p106.

⁶² Statement of Sergeant Bourke, Inquest Brief, p107.

⁶³ Statement of Sergeant Bourke, Inquest Brief, p107.

58. As Mr Beirouti was approaching Rowville 251's location the following broadcasts occurred:

- Rowville 251 *251, what's the description of the vehicle, so I'm at Brady and Stud*
- Knox 311 *I think Rowville 310 might have it up ahead of him, hard to see the taillights, it might be in the right-hand lane, just going past the Rowville Footy Club*
- Rowville 310 *... we're a bit away, we can see a car at speed in the distance*
- Rowville 310 *Still in right hand lane by the look of it coming up to Brady Rd now*
- Rowville 251 *251 copy that, Brady Road with sticks, what lane heading southbound?*
- Rowville 310 *Yeah, should be in the right-hand lane*
- Rowville 251 *Sticks applied, effective, units to continue southbound*
- Rowville 310 *Yeah, we stood back we're going over crest, got no obs at this point, I'll let you know if we got obs*
- Rowville 251 *Yeah 251, not sure if the sticks were effective or not, it sounded like they were, standby*

59. Whilst driving past the Brady Road intersection, the members of Rowville 310 saw the members of Rowville 251 returning to their vehicle and in the distance saw taillights driving through the intersection of the Monash Freeway off-ramp and approaching a crest in the road.^{64,65} As Rowville 310 drove through the Monash Freeway intersection and over the crest in the roadway they lost sight of any taillights in the distance ahead.⁶⁶

60. Whilst driving south on Stud Road, Mr Beirouti lost control of his Nissan Murano resulting in his vehicle leaving the roadway and heavily impacting a tree in the centre median strip. The fatal collision was not captured directly on CCTV however there was a private residence on Stud Road as well as the Liberty Service Station (182 Stud Rd) that captured the collision explosion as well as the time taken for Victoria Police vehicles to arrive. This CCTV footage showed that Rowville 310 was 21½ seconds, Knox 311 was 33 seconds and Rowville 251 was 1 minute 10 seconds behind Mr Beirouti's vehicle.

⁶⁴ Statement of Leading Senior Constable Abbass, Inquest Brief, p93.

⁶⁵ Statement of Senior Constable Leishman, Inquest Brief, p98.

⁶⁶ Statement of Leading Senior Constable Abbass, Inquest Brief, p94.

61. Upon the arrival of Rowville 310 a fire had commenced within the engine compartment of the vehicle. LSC Abbass ran to the Nissan Murano and located Mr Beirouti unresponsive on the grass and then dragged him away from the burning vehicle.⁶⁷ It was apparent to LSC Abbass that Mr Beirouti had sustained significant injuries in the collision.⁶⁸ Shortly after Ambulance Victoria paramedics arrived on scene and first aid was immediately commenced by paramedics with the assistance of Victoria Police officers and then subsequently members of Fire Rescue Victoria. Despite their sustained efforts Mr Beirouti was pronounced deceased at the scene.

SUBSEQUENT VICTORIA POLICE INVESTIGATION

62. A Critical Incident was declared with investigation of the collision taken carriage of by the MCIU, oversighted by the Professional Standards Command (PSC).

63. First Constable Nelson, Constable Smith, Leading Senior Constable Abbass, Senior Constable Leishman, Sergeant Bourke and Constable Dalton were all conveyed back to respective Police Stations where they underwent mandatory drug and alcohol testing and their statements taken by members of the MCIU overseen by the PSC.

64. The collision scene was examined by Investigators from the MCIU. Detective Sergeant (DS) Hay gives evidence that, *'the collision occurred in the centre median of Stud Rd, Dandenong, approximately 200 metres north of Heatherton Rd. At this location, Stud Rd was a four lane, two way, divided sealed road. The road was aligned approximately north south. The directions of travel were separated by a grassed and treed median which was approximately 8.5 metres wide.*

The south bound lanes of travel were approximately 3.6 metres wide and separated by a series of broken white lines painted on the road surface to the west of the south bound lanes was a 200mm shoulder then a raised concrete gutter and the centre median the surface of the south bound lanes was in good condition, except for two large depressions in the road surface to the south of the intersection of Judith Street in the right hand south bound lane, adjacent to the gutter.

The applicable speed limit was signed as 80km/h but dropped to 60km/h south of the collision scene. The road was dry. Approximately 278 metres north, from the rest position of the Nissan, were rough surface signs on either side of the south bound carriageway'.⁶⁹

⁶⁷ Statement of Leading Senior Constable Abbass, Inquest Brief, p94.

⁶⁸ Statement of Leading Senior Constable Abbass, Inquest Brief, p94.

⁶⁹ Statement of Detective Sergeant Hay, Inquest Brief, p154.

65. DS Hay then observed that *'leading from the second depression onto the centre median were rolling tyre prints. The prints were separating which indicates that the vehicle was rotating around its centre of mass. The tyre marks continued and changed their appearance and became straight marks. This indicated that the driver had commenced emergency braking at this location. The tyre skid marks continued for approximately 25 metres to where the Nissan struck a large tree'*.⁷⁰
66. DS Hay found no evidence of contact between any Police vehicles and the Nissan Murano driven by Mr Beirouti.⁷¹ In respect of the Nissan Murano he observed that it *'had sustained severe frontal rearward and lateral crush. The front and interior of the Nissan were fire damaged. The passenger side of the Nissan was torn out and still wrapped around the tree it had impacted'*.⁷²
67. Upon examining the vehicle tyres DS Hay observed that *'both the front and rear driver side tyres had a stop stick quill embedded in the tyre and both were deflated'*.⁷³
68. Whilst at the scene DS Hay conducted a series of skid tests on grass, then surmised as follows: *'Due to the presence of the depressions at the approximate area where the driver lost control, I conducted two drive throughs of the collision scene, at 60km/h and 97km/h. Both runs were able to be successfully completed driving over the depressions without incident, from which I concluded that the depressions in the road were alone not sufficient to cause a vehicle to lose control'*.⁷⁴
69. Ultimately, Detective Sergeant Hay, Collision Reconstructionist opined that *'at the commencement of the tyre marks in the grass the minimum speed of the Nissan was between 96-122km/h. Based on the research conducted by the US Department of Justice the tyres of the Nissan were most likely flat prior to the loss of control. At impact with the tree, the Nissan was travelling at a minimum speed of 81-111km/h. The loss of control was a combination of the speed, the undulations in the road surface and the Nissan having both tyres on the driver's side of the vehicle deflated'*.⁷⁵

⁷⁰ Statement of Detective Sergeant Hay, Inquest Brief, p155.

⁷¹ Statement of Detective Sergeant Hay, Inquest Brief, p156.

⁷² Statement of Detective Sergeant Hay, Inquest Brief, p158.

⁷³ Statement of Detective Sergeant Hay, Inquest Brief, p158.

⁷⁴ Statement of Detective Sergeant Hay, Inquest Brief, p161.

⁷⁵ Statement of Detective Sergeant Hay, Inquest Brief, p165.

70. On 25 February 2021 SC Giulieri of the Mechanical Investigation Unit conducted a mechanical examination on the Nissan Murano and made the following observations:

- (a) The driver's side front tyre had greater than 5mm of tread across the treaded surface and was deflated. SC Giulieri located a tubular spike which was approximately 5mm in diameter that had pierced the tyre to the outer sidewall, near the shoulder of the tyre;⁷⁶
- (b) The driver's side rear tyre had greater than 7mm of tread across the treaded surface. The tyre was also deflated and SC Giulieri located the remains of a tubular spike, approximately 5mm in diameter had pierced the tyre near the centre of the treaded surface; and⁷⁷
- (c) SC Giulieri tested the deflation rate of the driver's side rear tyre through the tubular spike and timed the pressure to drop from 30psi to zero psi. The test was completed three times, off car with no load on the tyre and on average the time taken to deflate was 1 minute 15 seconds.⁷⁸

71. SC Giulieri concluded that his examination *'revealed that both the driver's side tyres were deflated, and the cause was due to one tubular spike in each tyre. Driving on a deflated or deflating tyre may cause handling concerns in certain conditions. I could not test the braking and steering systems, however the damage to these components is consistent with the damage to the vehicle, caused in the collision. There were no other faults, failures or conditions that would have caused or contributed to the collision'*.⁷⁹

72. It was confirmed that all six members had successfully completed the training module 'Pursuit Policy 2019'. Further it was confirmed that SGT Bourke had also successfully completed the training module 'Vehicle Immobilising Devices'.

73. Enquiries were made with the Driver Training Unit which confirmed:

- (a) FC Nelson (driver of Knox 311) held a restricted silver approved driving authority that authorised the officer to drive 25km/h above the posted speed limit however was not authorised to engage in pursuits;

⁷⁶ Statement of Senior Constable Giulieri, Inquest Brief, p 145.

⁷⁷ Statement of Senior Constable Giulieri, Inquest Brief, p 146.

⁷⁸ Statement of Senior Constable Giulieri, Inquest Brief, p 148.

⁷⁹ Statement of Senior Constable Giulieri, Inquest Brief, p 150.

(b) LSC Abbass (driver of Rowville 310) held a silver approved driving authority that authorised the officer to engage in urgent duty response speed limited to 150km/h; and

(c) SGT Bourke (driver of Rowville 251) held a silver approved driving authority that authorised the officer to engage in urgent duty response speed limited to 150km/h.

74. Enquiries were also made with VicRoad that confirmed that Mr Beirouti was the holder of a current Victorian Drivers Licence which had a zero blood-alcohol limit condition. These enquiries also confirmed that the black Nissan Murano that Mr Beirouti was driving had a current registration in his name.

75. Later, the mobile phone records of Mr Beirouti were obtained that showed the final call activity was registered at 2:44:14am, approximately an hour prior to the fatal collision.

76. The factual circumstances of Mr Beirouti's death presents three specific issues for consideration.

(a) The deployment of the vehicle immobilising device; and

(b) Whether Knox 311, Rowville 310, or Rowville 251 engaged in a pursuit with Mr Beirouti; and

(c) What caused Mr Beirouti to lose control of his vehicle?

DEPLOYMENT OF VEHICLE IMMOBILISING DEVICE

77. The use of a Vehicle Immobilising Device (**VID**) is governed by section 63B of the *Road Safety Act 1986* and that provides that '*(1) The Chief Commissioner of Police may authorise the use, by police officers, of a vehicle immobilising device that is capable of causing a vehicle to stop or may prevent a vehicle from moving and includes a device designed for, or capable of, deflating tyres to a) to prevent the use of the vehicle by a person for the purpose of escaping from lawful custody or avoiding arrest*'. The Victoria Police Manual (**VPM**) *Vehicle Immobilising Devices* further states that '*to use a VID under section 63B(1)(a), a power of arrest must exist prior to the deployment of the VID*'.

78. Section 124 of the *Family Violence Protection Act 2008* explicitly provides a power of arrest and states ‘if a police officer believes on reasonable grounds that a person has committed an offence against section 123, the officer may, without warrant, arrest and detain the person’. Section 123 of the *Family Violence Protection Act 2008* defines a range of offences in respect of contravention of a Family Violence Intervention Order (**FVIO**).
79. After reviewing the available evidence, I am satisfied that:
- (a) the legislative criteria were satisfied under s63B of the *Road Safety Act 1986* authorising the deployment of a VID (that is Mr Beirouti was using a vehicle to avoid arrest); and
 - (b) SGT Bourke, the Rowville 251 Field Supervisor, satisfied himself that the legislative criteria were fulfilled, and subsequently appropriately authorised the deployment of a vehicle immobilising device.
80. The VPM *Vehicle Immobilising Devices* defines a number of responsibilities in respect of the member (i) authorising and (ii) deploying the VID, in respect of
- (a) Training and qualification requirements;
 - (b) Ensuring all safety principles are considered;
 - (c) Identifying a suitable location for the deployment zone; and
 - (d) Ongoing risk assessments pre and post deployment – including risk assessments in respect of safety, deployment zone, environment and tactical
81. I am satisfied on all of the available evidence, in particular [19]-[25] of SGT Bourke’s statement, that a thorough and comprehensive risk assessment was conducted in accordance with the VPM prior to the deployment of the VID.
82. Further I am satisfied that, on the evening in question, SGT Bourke’s conduct fully complied with the legislative and policy requirements in respect of the deployment of a VID.

WAS A PURSUIT ENGAGED IN BY KNOX 311, ROWVILLE 310 or ROWVILLE 251

83. Annexure A to this Finding contains a marked-up 'Google Maps' of the entire route taken by Mr Beirouti upon coming to the attention of Knox 311. Marked up on those maps are the significant locations, being:

- (a) The intersection of Ferntree Gully Rd and Stud Rd where Knox 311 turned left onto Stud Rd after Mr Beirouti breached the red traffic control signal and the attempted intercept commenced;
- (b) The intersection of Stud Rd and Wellington Rd where Mr Beirouti activated the red light speed camera and Rowville 310 turned right onto Stud Rd from Wellington Rd and became the lead Victoria Police vehicle;
- (c) The Intersection of Stud Rd and Brady Rd where the VID was deployed;
- (d) The collision scene, just over eight kilometres south of where initial intercept commenced; and
- (e) The location of CCTV cameras contained on within the Inquest Brief, being
 - (i) Rowville McDonalds, intersection of Stud and Fulham Rds
 - (ii) Red light speed camera, intersection of Stud and Wellington Rds
 - (iii) Ponds Restaurant, 1233 Stud Rd
 - (iv) Polish House Syrena, 1325 Stud Rd
 - (v) Private residence and Liberty Service Station near collision scene.

WAS THERE A BASIS FOR KNOX 311 TO ATTEMPT TO INTERCEPT MR BEIROUTI'S VEHICLE?

84. It is *not* in dispute that an Interim FVIO was in force between Mr Beirouti and his current partner on 16 January 2021 *and* it is *not* in dispute that his partner alleged that on 16 January 2021, Mr Beirouti attended her premises and entered by climbing through the bathroom window subsequently breaching the Interim FVIO.

85. The conduct of Constable Uren and First Constable Mehmet in completing a family violence report and placing a whereabouts file in respect of Mr Beirouti, detailing the reasons he was of interest, and that he was to be arrested when in Police contact, was entirely appropriate and in accordance with the VPM as well as the legislative provisions of the *Family Violence Protection Act 2008*. Knox 311, after being alerted to the active whereabouts for the contravene FVIO offence upon running Mr Beirouti's vehicle registration, were therefore acting entirely appropriately in attempting to intercept and arrest Mr Beirouti for the purposes of an interview.
86. CCTV footage from each of the above identified locations, following the attempted intercept of Mr Beirouti, provides conclusive evidence, independent of the officers' recollection of events, as to:
- (a) Whether the emergency lights of the Police vehicle remained activated, that is, whether the attempted intercept remained ongoing, or the respective members had disengaged; and
 - (b) The separation time between Mr Beirouti's vehicles and each respective Victoria Police vehicle, that is how closely Mr Beirouti's vehicle was being followed as the incident progressed.
87. CCTV from McDonalds Rowville (intersection of Stud and Fulham Rds), 2.75 kms after commencement of the initial intercept, shows Mr Beirouti's vehicle being followed two seconds behind by Knox 311. The CCTV confirms at this location that Knox 311 had *deactivated* its emergency lights.
88. As Mr Beirouti approached the red-light speed camera at the intersection of Stud and Wellington Rds, Knox 311 broadcast '*he's just approaching Wellington now, I'm about 200 metres back, it's in the far-right hand lane, it's just crashed a red*'. The red-light speed camera at this intersection captured Mr Beirouti entering the intersection at 94km/h against the red traffic control signal. Rowville 310 then entered the intersection from Wellington Rd, lights activated as it was turning right onto Stud Rd against the red traffic control arrow, five seconds behind Mr Beirouti's vehicle.
89. Knox 311 was captured fourteen seconds behind Mr Beirouti's vehicle at a speed of 66km/h as it entered the intersection, supporting the broadcast that they were now approximately two hundred metres behind. The red-light camera further captures Knox 311 briefly activating its emergency lights for the purposes of entering the intersection against the red traffic control signal, and then *deactivating* them immediately after as it continued driving south on Stud Road.

90. CCTV from both the Ponds Restaurant (1233 Stud Rd) and Polish House Syrena (1325 Stud Rd) confirm that both Rowville 310 and Knox 311 had *deactivated* their emergency lights as they passed both of these locations. Further the average time of separation between Mr Beirouti's vehicle and Rowville 310 was six seconds and between Mr Beirouti's vehicle and Knox 311 was fifteen seconds.
91. At the scene of the fatal collision CCTV cameras from both a private residence on Stud Road as well as the Liberty Service Station, whilst not capturing the collision directly, capture the post-impact explosion. This CCTV footage captures that following the fatal collision, Rowville 310 arrived on scene after 21.5 seconds, Knox 311 arrived on scene after 33 seconds and Rowville 251 arrived on scene after 70 seconds.
92. Of relevance, a vehicle travelling at a constant speed of 80km/h travels a distance of 477 metres (21.5 seconds), 732 metres (33 seconds) and 1554 metres (70 seconds) or at a constant speed of 110km/h travels a distance of 655 metres (21½ seconds), 1006 metres (33 seconds) and 2135 metres (70 seconds).
93. This is consistent with the evidence of First Constable Nelson (Knox 311) that they lost sight of Mr Beirouti and further of Senior Constable Abbass (Rowville 310) that *'as I drove past the Monash Freeway off ramp intersection and over the crest of the road, I could no longer see any taillights in the distance ahead. I continued driving south on Stud Road and after passing the basketball centre, observed a yellow glow in the centre median strip, directly opposite a service station'*.
94. The maps within Annexure A demonstrate that for both Knox 311 and Rowville 310, the further southbound that Mr Beirouti travelled along Stud Rd, the greater the distance of separation between the respective vehicles. The CCTV at each respective location provides objective evidence that at no time did either Knox 311 or Rowville 310 accelerate and travel at a speed to 'close the gap' with Mr Beirouti's vehicle.
95. Further the CCTV provides objective evidence that apart from activating their emergency lights for (i) the purposes of travelling through an intersection against a red traffic control signal or (ii) arriving upon the scene of a fatal motor vehicle collision, neither vehicle had their emergency lights activated as they travelled southbound on Stud Road and had therefore disengaged from the attempted intercept of Mr Beirouti.
96. Returning to the original question, had Knox 311, Rowville 310 and/or Rowville 251 engaged in a pursuit with Mr Beirouti?

97. The activation of Knox 311's emergency lights and siren upon following Beirouti turning left from Ferntree Gully Rd into Stud Rd was a clear direction to stop. The VPM - *Pursuits* policy in force at the time stated that '*a direction to stop may include flashing the headlights, activating the red and blue flashing lights or sounding the alarm or other warning device of the police vehicle.*

After giving a direction to stop, members must allow the driver to stop as soon as practicable, that is, within a reasonable time, distance and/or appropriate location Where the 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:

(a) *discontinue the attempted intercept and not follow the vehicle; or*

(b) *conduct a pursuit if the pursuit justification criteria are met.*

98. It is not in dispute that the pursuit justification criteria *was not met* in the factual circumstances as they presented themselves (that is there was *not* a need to apprehend Mr Beirouti to prevent or respond to a serious risk to the health or safety of any person). As much is clearly evident from Rowville 251's broadcast '*we're not justified in pursuing given the active whereabouts, but we can authorise stop sticks given the evade and the risk to the public with the crashing of the reds and the whereabouts for the family violence matters*'.

99. Knox 311 were then required by the VPM *Pursuits* policy to *discontinue the attempted intercept and not follow the vehicle*. As is evidenced from the McDonalds Rowville CCTV footage (and also subsequent CCTV footage), Knox 311 discontinued the attempted intercept *however* continued following Mr Beirouti's vehicle, joined a short time later by Rowville 310 that engaged in identical conduct.

100. At the time of this incident, I am of the opinion there was ambiguity and a clear conflict between the *Pursuits* policy and the VPM - *Vehicle Immobilising Devices* policy. The *Pursuits* policy clearly required a discontinuance of the attempted intercept and for the subject vehicle *not* to be followed. However, the VPM - *Vehicle Immobilising Devices* policy required the authorising member, prior to authorising the deployment, to complete a risk assessment that included amongst the tactical considerations, *the availability of additional resources*. That is, VID deployment was predicated on there being additional police units available, following the target vehicle to post-deployment, effect an arrest in circumstances where that deployment causes the target vehicle to be halted.

101. Prior to Inquest the Chief Commissioner, at the request of the Court, filed an Operational Safety Critical Incident Review (**OSCIR**). The OSCIR made the following key finding ‘5. Knox 311, after the second attempted intercept of the Nissan that morning, and then with Rowville 310, **continued to follow** the Nissan after the driver failed to comply with the direction to stop and he was taking deliberate action to avoid being stopped, **meeting the definition of a pursuit**’. The OSCIR further observed that ‘at no stage were police narrowing the gap or pressing the Nissan as it travelled south along Stud Road’.

102. Counsel Assisting at Inquest directed me to the Chief Commissioner’s response to this apparent ambiguity, contained within the statement of Assistant Commissioner Weir, Assistant Commissioner of Road Policing Command. At paragraphs [27]-[29] Assistant Commissioner Weir states:

‘Although the pursuit policy states that if a decision is made not to engage in a pursuit, police must discontinue the intercept and not follow the vehicle. It does not mean that the police vehicle must come to a stop and apprehension of the target vehicle should be abandoned. Members are required to notify police communications about the circumstances of the follow in some cases, the outcome of the communication with police communications might be that because a power of arrest still exists, a VID can effectively be deployed by a police unit, sufficiently in front of the target vehicle. This is a common scenario in dynamic incidents, such as that which existed with respect to Mr Beirouti.

In these circumstances, the non-pursuit related response described in Clause 5.4 of the VID policy is enlivened. The risk assessment and tactical considerations in Clause 5.2 of the VID policy must be applied and the operational response must be appropriate for a deployment incident. This might include the deployment of additional resources to assist with a potential arrest if the target vehicle was stopped. This could be the police unit that had previously attempted to intercept the target vehicle and was still travelling in the same direction, but no longer had the vehicle in sight Accordingly I do not consider Clause 2.4 of the pursuit policy and Clause 5.2 of the VID policy to be in conflict.

If the circumstances are such that a pursuit is not justified, but it is still necessary to apprehend an offender, the pursuit policy ceases to apply and the VID policy instead takes over to govern the police response’.

103. In post-Inquest written submissions the Chief Commissioner re-asserted the above position, stating that *‘Assistant Commissioner Weir, the current head of the Victoria Police Road Policing Command, provided a statement in this inquest which directly addressed the purported ambiguity between section 4.2 of the VPM Pursuits and section 5.2 of the VPM VID’*. Counsel for the Chief Commissioner then referred me to [22]-[29] of the statement of Assistant Commissioner Weir, with [27]-[29] reproduced above.

104. In further support of this position, Counsel for the Chief Commissioner referred me to section 2.4 of the VPM Pursuits specifically in respect of vehicle intercepts, that provides *‘where the intercept is discontinued, members must:*

Turn off flashing lights and alarm and resume normal driving

Notify Police Communications of the details of the vehicle and the circumstances

Start the investigation and recording processes; see section 9’.

[underlining emphasis added in written submissions]

105. Counsel for the Chief Commissioner submitted that *‘the instruction to not follow the vehicle upon discontinuing an attempted intercept did not, on its face require that the police vehicle stop, change direction, or actively move away from the vehicle. Rather ... the instruction required that members disengage in interception procedures by turning off their flashing lights and alarm and resuming normal driving’*. Ultimately Counsel for the Chief Commissioner submitted that *‘the VPM Pursuits did not set out what was to happen after members notified Police Communications of the circumstances of the attempted intercept’*.

106. There are several observations to be made in respect of the Chief Commissioner’s submissions. In interpreting the meaning of the phrase *‘discontinue the attempted intercept and not follow the vehicle’* one is entitled to utilise the ordinary, everyday meaning of those words. The Cambridge English Dictionary defines the verb *‘follow’* as *‘to move behind someone or something and go where he, she, or it goes’*. It is *not* in dispute that Knox 311 and Rowville 310 *followed* Mr Beirouti’s vehicle, as much is incontrovertible according to the CCTV evidence.

107. Policy documents should provide, where possible, an unambiguous framework to guide operational policing decisions. Police members in interpreting policy documents, unless explicitly stated, are entitled to engage with the ordinary, everyday meaning of phrases such as *‘not follow the vehicle’*.

108. I disagree with the submission that *'the VPM Pursuits did not set out what was to happen after members notified Police Communications of the circumstances of the attempted intercept'*. The third sub-section, not underlined in the excerpt above, required Police members to *'start the investigation and recording processes; see section 9'*. Section 9.2 *Investigations of vehicles failing to stop when directed* repeats the initial requirement, that is *'members must discontinue the intercept attempt, stop following the vehicle and advise Police Communications of the details of the vehicle and the circumstances'*.

109. However, section 9.2 then goes on to require Police members to *'commence an investigation to locate and take action against the vehicle occupants suspected of committing an offence consider appropriate charges considering submitting a KALOF with any details of vehicle or vehicle occupants'*. Furthermore, section 9.2 identifies that *'the investigation may include conducting a search of the immediate area and surrounds'* as well as a range of other forensic and investigative strategies. The requirements of section 9.2 are explicit and clearly define the responsibilities of police members within an investigative framework. The requirements of section 9.2 are clearly inconsistent with the submission that the VPM - *Pursuits* policy was silent as to what was to happen following notification to Police Communications.

110. I remain of the opinion that despite Assistant Commissioner Weir's statement and the Chief Commissioner's submissions, at the time of this incident there was ambiguity and a clear conflict between the *Pursuits* policy and the VPM *Vehicle Immobilising Devices* policy. I am *not* satisfied that the policies conveyed the position articulated by Assistant Commissioner Weir or within the written submissions. For clarity, at this point, I am *not* making any adverse comment in respect of the conduct of either Knox 311 or Rowville 310. The issue here is the clarity of these two policies in providing an unambiguous framework to guide operational policing decisions.

NEW VPM ROAD POLICING - OPERATIONS

111. I note that the OSCIR also identified that *'with the introduction of VIDs and also the increasing use of aerial platforms during road police operations, the term a 'police follow' is being adopted and practiced more frequently. As a result of this finding, enquiries were made with road policing where I was informed that a comprehensive review of Road Policing VPM, VPMP and VPMGs is being undertaken'*.

112. These new Road Policing policies were not available at the time of Inquest, as they were still in draft form. In the circumstances Counsel Assisting submitted that it was open for a recommendation to be made that any new road policing VPM resolves this ambiguity, such that there was clarity in respect of attempted intercepts, where the pursuit justification criteria was not satisfied, and the circumstances in which members were permitted to engage in an extended follow of a target vehicle. The Chief Commissioner sought an opportunity to provide written submissions on the issue which I granted.

113. Following the Inquest, and prior to the Chief Commissioner's submissions being filed, three new road policing VPMs, 'Operational', 'Enforcement' and 'General' came into force. For current purposes the relevant VPM *Road Policing – Operations* consolidates the policy position including vehicle intercepts, urgent duty driving, pursuits and vehicle immobilising devices. I have had the opportunity to consider both these new three road policing VPMs that have come into force, supplemented by the Chief Commissioner's written submissions.

114. Section 4 of the *Vehicle intercepts* policy requires a direction to stop to be given and for members to allow the driver to stop as soon as practicable, that is, within a reasonable time, distance and/or appropriate location. Section 4.5 *Responding to vehicles that fail to stop* then states

'Where the driver fails to stop after a direction to stop is given, stops but fails to remain stopped 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

Conduct a pursuit if the pursuit justification criteria are met'

115. The policy in respect of *Pursuits* remains unchanged. A *pursuit* is defined as *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*. The pursuit justification criteria requires that *members may only conduct a pursuit when they reasonably believe a serious risk to the health or safety of a person existed before attempting interception and there is a need to prevent or respond to that risk*.

116. The above policies remain unchanged (albeit consolidated into a single document) from that in force at the time of Mr Beirouti's death. As much has been conceded by Counsel for the Chief Commissioner within their written submissions: *'the VPM RPO does not contain any changes which specifically address the purported ambiguity said to arise from the interaction between section 2.4 of the former VPM Pursuit Policy and section 5.2 of the former VPM VID'*.
117. Further, Counsel for the Chief Commissioner submits that *'these existing sections of VPM were not amended for the purposes of the new VPM RPO because the position of the Chief Commissioner was (and is) that they did not require amendment. For the reasons set out the Chief Commissioner's position is that the relevant sections are not in conflict, and do not give rise to the purported ambiguity'*.
118. The VPM has introduced a new section 11 *Extended following of vehicles* that states the following:
- (a) Members may be required to engage in urgent duty driving to facilitate the:
 - (i) Mobile positioning of a police vehicle in relation to a subject vehicle and/or high-risk driver, and
 - (ii) Extended following of the subject vehicle and/or high-risk driver in circumstances where it is reasonably believed the driver of the subject vehicle is unaware of the presence of police.
 - (b) Extended following and the mobile positioning of a police vehicle may include being in support of an aerial observation platform;
 - (c) This must always be done in accordance with the "Urgent duty driving – Risk assessment and decision-making guide" at section 13 of this policy;
 - (d) Police members engaging in the extended following of a vehicle that involves urgent duty driving must advise Police Communications at the earliest opportunity to enable on-air notification to the patrol supervisor or divisional patrol supervisor;
 - (e) Extended following of a vehicle should only be continued with the approval of the patrol supervisor or divisional patrol supervisor via Police Communications; and
 - (f) The relevant patrol supervisor or divisional patrol supervisor must actively manage the extended follow and, where there is an unacceptable risk or its continuation is unreasonable in the circumstances, direct the termination of the extended follow.

119. Counsel for the Chief Commissioner submitted that ‘*most importantly for present purposes, the VPM RPO now incorporates specific instructions in the practice of “extended follows” (unlike the policies in place at the time of Mr Beirouti’s death) ... the circumstances in which “extended follows” are permitted, and the way in which they are to be conducted, have already been clarified by the new VPM RPO. Accordingly, there is no need for the Coroner to recommend that the VPM be amended to clarify the circumstances in which members are able to engage in an “extended follow” of a target vehicle*’.
120. I am *not* satisfied that the VPM - *Road Policing – Operations* policy resolves the ambiguity under discussion. Whilst I appreciate the Chief Commissioner’s position is that no ambiguity existed in the first instance, I disagree for the reasons previously articulated. In circumstances where both the *Pursuits* and *VIDs* policies essentially remain unchanged, one necessarily focuses upon the new section 11 in respect of “extended follows”.
121. Under the VPM *Road Policing – Operations* policy the requirement remains that, following an attempted intercept, the police member is required either to ‘*discontinue the attempted intercept and not follow the vehicle*’ or formally engage in a *pursuit*. Whilst I appreciate that the new policy has introduced ‘*11. Extended following of vehicles*’, I note that section is incorporated beneath the heading ‘*Urgent Duty Driving*’ with no clear linkage to either the *Vehicle intercepts* or *Pursuits* policies.
122. There remains ambiguity in the policy, as it currently stands, in respect of when an extended follow may be utilised following an attempted intercept of a subject vehicle where the pursuit justification criteria is not satisfied. Further I interpret that according to the policy, extended following of vehicles is only to be undertaken ‘*in circumstances where it is reasonably believed the driver of the subject vehicle is unaware of the presence of police*’. It is entirely unclear whether an *extended follow* may occur subsequent to an *attempted intercept* in circumstances where the subject vehicle would clearly be aware of the presence of police (by virtue of the attempted intercept).
123. In concluding this section, I make two observations.

124. Firstly, the issue here is the clarity of these policies in providing an unambiguous framework to guide operational policing decisions. I reject the Chief Commissioner's submission that no ambiguity existed at the time of Mr Beirouti's death, and further that no ambiguity exists with the policy at it stands today. I reject that such an interpretation of the policy was '*based on an overly narrow reading*' of the respective sections. In the circumstances I recommend that the Chief Commissioner reconsider and amend the new VPM *Road Policing – Operations* to provide clear and unambiguous policy to guide operational policing decisions.
125. Secondly one may reasonably question why I have considered it appropriate to draw attention to this policy ambiguity. In my opinion, it is critical that there is clear and unambiguous policy surrounding Victoria Police's conduct in respect of vehicle intercepts that *may* then escalate to either extended follows or pursuits.
126. As His Honour Coroner John Olle found in the recent Finding into the passing of Raymond Noel Lindsay Thomas, '*in an attempted intercept, there is real potential to instil fear in the subject driver. Drivers in panic can make poor decisions*'. His Honour went on to reference evidence from Assistant Commissioner Fryer in November 2015 in respect of drivers who failed to pull over, stating '*whether underage, drug or alcohol affected or whatever, they pose a significant risk on the roads, but in pursuit they will continue to flee and increase speed, with a heightened increase in risk to police, themselves and members of the community*'. As Coroner Olle opined, '*the common thread in all pursuit fatalities is that dangerous driving is a consequence of the attempt to intercept*'.
127. I appreciate none of the police vehicles that evening engaged in a pursuit with Mr Beirouti and I am not positing such. They did however attempt to intercept him, and as experience shows, attempted intercepts are evolving dynamic situations where human behaviour can be unpredictable, solely based on the presence and subsequent conduct of a police vehicle. It is for this very reason that it is critical that the policy governing vehicle intercepts, extended follows and pursuits convey clear and unambiguous requirements to operational police members.

WHAT CONTRIBUTED TO THE LOSS OF CONTROL OF MR BEIROUTI'S VEHICLE?

128. Collision Reconstructionist Detective Sergeant (DS) Hay attended the collision scene on 24 January 2021 and, as a result of his examinations, opined that *'the loss of control was a combination of the speed, the undulations in the road surface and the Nissan having both tyres on the driver's side of the vehicle deflated'*.

Vehicle Speed

129. DS Hay opined that at the commencement of the tyre marks in the grass the minimum speed of Mr Beirouti was between 96km/h to 122km/h (reduced to 81-111km/h at the time of impact with the tree). The sign-posted speed limit at that location was 80km/h therefore Mr Beirouti was travelling 16-42km/h *over* the speed limit. On this basis I find speed to be a contributory causal factor in the collision.

Methylamphetamine Consumption

130. Mr Beirouti's postmortem toxicology detected the presence of methylamphetamine (1.3mg/L) and amphetamine (0.2mg/L), a metabolite of the former. I also note the following relevant comments within the Toxicology Report, notably *'in drivers of motor vehicles amphetamines can produce aggressive and dangerous driving, and even produce rebound fatigue when the effects of amphetamines are waning amphetamine users often develop a psychosis, particularly paranoid psychosis'*. I find Mr Beirouti's methylamphetamine concentration to be a further causal factor in the collision.

Undulations in the Road Surface

131. During the crash scene examination, DS Hay identified *'the surface of the south bound lanes was in good condition, except for two large depressions in the road surface to the south of the intersection of Judith Street in the right hand south bound lane, adjacent to the gutter'*. These are visually apparent in both Figure 2 of DS Hay's statement and also in Exhibit 2 Crime Scene Photographs. In reviewing the CCTV footage from the Liberty Service Station, DS Hay also concluded that *'the footage shows the Nissan travelling in the right-hand lane of Stud Road. As the Nissan travels over the depressions, it appeared to rotate onto the median'*.

132. Enquiries were subsequently made with the Department of Transport with their Senior Road Delivery Engineer, Metro Assets (Roads), who advised that on 28 April 2020 a complaint was received from a member of the public in respect of the roadway surface at this location. On 5 May 2020 the roadway was inspected by a Department Surveillance Manager who identified two areas where the pavement was sinking given the ground in this area was old wetlands.
133. Two options were considered and costed and just under a month later on 2 June 2020, four 'ROUGH SURFACE' signs were installed by VicRoad's maintenance contractor to pre-warn motorists of the dips in the road surface. These temporary warning signs were installed to reduce speed until future resurfacing or major patching works could be enacted.
134. Of note, DS Hay during his examination at the collision scene indicated that *'due to the presence of the depressions at the approximate area where the driver lost control, I conducted two drive throughs of the collision scene, at 60km/h and 97km/h. Both runs were able to be successfully completed driving over the depressions without incident, from which I concluded that the depressions in the road were alone not sufficient to cause a vehicle to lost control'*.
135. Whilst I accept the conclusions of DS Hay that the undulations in the road surface were not, of themselves, sufficient to cause Mr Beirouti to lose control of his vehicle, I nevertheless find that they were a contributing factor in his subsequent collision.

Vehicle Immobilising Device (Stop-Sticks)

136. Both the front and rear driver's side tyres of Mr Beirouti's vehicle were deflated, and a stop stick quill was recovered from each of those tyres.
137. The issue of vehicle interdiction (urgent duty driving, pursuits, vehicle immobilising devices, hostile vehicle policy) was considered extensively during the Bourke Street Inquest by the now Deputy State Coroner Hawkins. The Bourke Street Finding included the following specifically on the question of tyre deflation devices (VIDs)⁸⁰ where Her Honour found *'This Inquest highlighted the difficulties of stopping and apprehending an offender in a moving vehicle who refuses to stop. These are 'incredibly difficult' and dangerous challenges, which Victoria Police has aimed to address through policies on pursuits and urgent duty driving, and through the use of vehicle immobilisation devices tyre deflation devices are capable of causing a vehicle to stop or preventing a vehicle from moving. However, the devices may not prevent a driver from continuing to drive. I was*

⁸⁰ Bourke Street Coronial Finding, pp262-264 & 294-306.

informed that there have been many instances where drivers have continued driving on flat tyres, rims and in some cases, after the rim has disintegrated, they have continued to drive on the drums until the wheel assembly collapses completely’.

138. In addition to this evidence from the Bourke Street Finding, a statement was requested and received from Assistant Commissioner Weir, Road Policing Command of Victoria Police. The Assistant Commissioner provides the following relevant evidence:

(a) *‘If a Stop Stick is effectively deployed, it will result in the controlled deflation of at least one tyre; usually within 20-30 seconds. This will in most cases, reduce the speeds at which the vehicle is capable of being driven as the tyre integrity deteriorates. The vehicle becomes more difficult to control, in most cases this leads the driver of the offending vehicle to either stop the vehicle and surrender or try and escape on foot.*

(b) *Whilst deflated tyres cause a vehicle to pull to the side, usually only a small steering correction is required to maintain a straight-line path and it is well within the range of steering inputs seen in normal driving. As outlined in Detective Sergeant Robert Hay’s statement, a deflated tyre still maintains significant capability to allow the vehicle to be controlled and manoeuvred’.*

139. The Assistant Commissioner’s statement also provided a range of statistics in respect of VID deployment over the last 5 years between 2016-2021 in both pursuits, and non-pursuit incidents. In summary:

(a) VIDs were deployed on 218 occasions during 160 pursuits, and on 141 occasions they were effective in stopping the target vehicle.

(b) VIDs were deployed on 493 non-pursuit occasions, and on 378 occasions were either partially or fully effective in slowing or stopping the target vehicle.

(c) Mr Beirouti is the only fatality that has resulted from the use of VIDs.

140. Based on the available evidence, I find that the use of VIDs was a contributing factor in Mr Beirouti’s collision, however it is important to reiterate my conclusions that SGT Bourke, the Rowville 251 Field Supervisor, appropriately deployed VIDs in accordance with governing legislation.

CONCLUDING COMMENTS

Pursuant to section 67(3) of the Act, I make the following comments connected with the death:

141. I find there were four contributing factors to Mr Beirouti's fatal collision:
- (a) the speed that Mr Beirouti drove his vehicle;
 - (b) Mr Beirouti's consumption of methylamphetamine;
 - (c) the undulations in the road surface; and
 - (d) the deflation on Mr Beirouti's vehicle of both his drivers' side tyres from the deployment by Victoria Police of a VID.
142. It is not possible to ascribe with any certainty the relative contributions each of these factors made, save to say that neither the undulations in the road surface nor the deflated tyres, *operating in isolation*, would have been sufficient to have caused Mr Beirouti to lose control of his vehicle.
143. For the avoidance of doubt, I am not making any adverse comment or finding in respect of either Victoria Police or the Department of Transport.
144. For its part, the Department of Transport has responsibility for providing and facilitating roadworthy surfaces for vehicles driven under normal conditions. The relevant roads in this collision met that standard.
145. The individual Police members involved in the collision (responding as Knox 311, Rowville 310, and Rowville 251) made continuous diligent attempts to apply the operative policies within a dynamic tactical environment. Their conduct at all relevant times was in accordance with legislative authority.
146. However there existed at the time, and there continues to exist, ambiguity in the *Victoria Police Manual policies* in respect of vehicle intercepts, specifically the requirement that where a direction to stop has been given and subsequently ignored, and the pursuit justification criteria are not satisfied, Police members are required to '*discontinue the attempted intercept and not follow the vehicle*'.

RECOMMENDATION:

Pursuant to section 72(2) of the Act, I make the following recommendation connected with the death:

- A. Considering the ambiguity still present within the policy framework traversed above, I recommend that the Chief Commissioner reconsider and amend the new *VPM Road Policing – Operations* policy to provide clear guidance on operational policing decisions, specifically but not limited to the direction that *‘police members are required to discontinue the attempted intercept and not follow the vehicle’*.

FORMAL FINDINGS REQUIRED UNDER THE ACT:

147. Having held an inquest into the death of John Jacob Beirouti, I make the following findings, pursuant to section 67(1) of the Act:

- (a) the identity of the deceased was John Jacob Beirouti born on 16 May 1977;
- (b) the death occurred on 24 January 2021 at Stud Road, Dandenong North;
- (c) from multiple injuries sustained in a motor vehicle collision (driver); and
- (d) that the death occurred in the circumstances set out above.

148. I convey my condolences to Mr Beirouti’s family.

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

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

- (a) The family of John Beirouti;
- (b) Chief Commissioner of Police, Mr Shane Patton APM;
- (c) Detective A/Sergeant Leigh Miller, MCIU, Coroner's Investigator.

Signature:

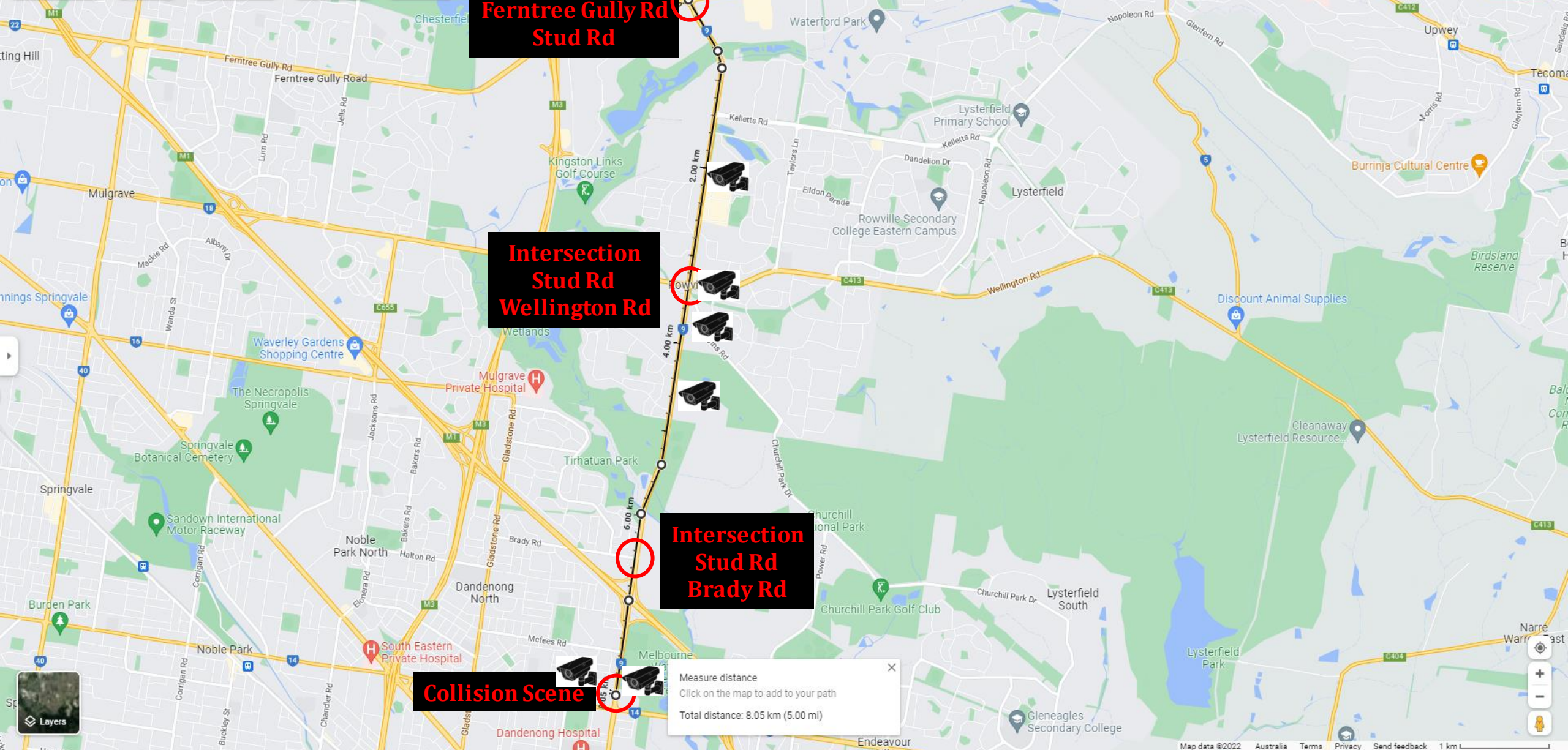


CORONER SIMON McGREGOR
CORONER

Date: 19 September 2022

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.

ANNEXURE A



**Intersection
Ferntree Gully Rd
Stud Rd**

**Intersection
Stud Rd
Wellington Rd**

**Intersection
Stud Rd
Brady Rd**

Collision Scene

Measure distance
Click on the map to add to your path
Total distance: 8.05 km (5.00 mi)

Restaurants Hotels Attractions Transport Parking

**Intersection
Ferntree Gully Rd
Stud Rd** 0 secs

2 secs

**Intersection
Stud Rd
Wellington Rd** 14 secs

15 secs

**Intersection
Stud Rd
Brady Rd**

33 secs

Collision Scene

Measure distance
Click on the map to add to your path
Total distance: 8.05 km (5.00 mi)

Rowville 310

tree+Gully+Rd,+Ferntree+Gully+VIC+3156/@-37.9351507,145.2452726,13.71z/data=!4m5!3m4!1s0x6ad63e3182a12dc5:0x268c5bda1b02ff63!8m2!3d-37.8872342!4d145.2647284

Restaurants Hotels Attractions Transport Parking

**Intersection
Ferntree Gully Rd
Stud Rd**

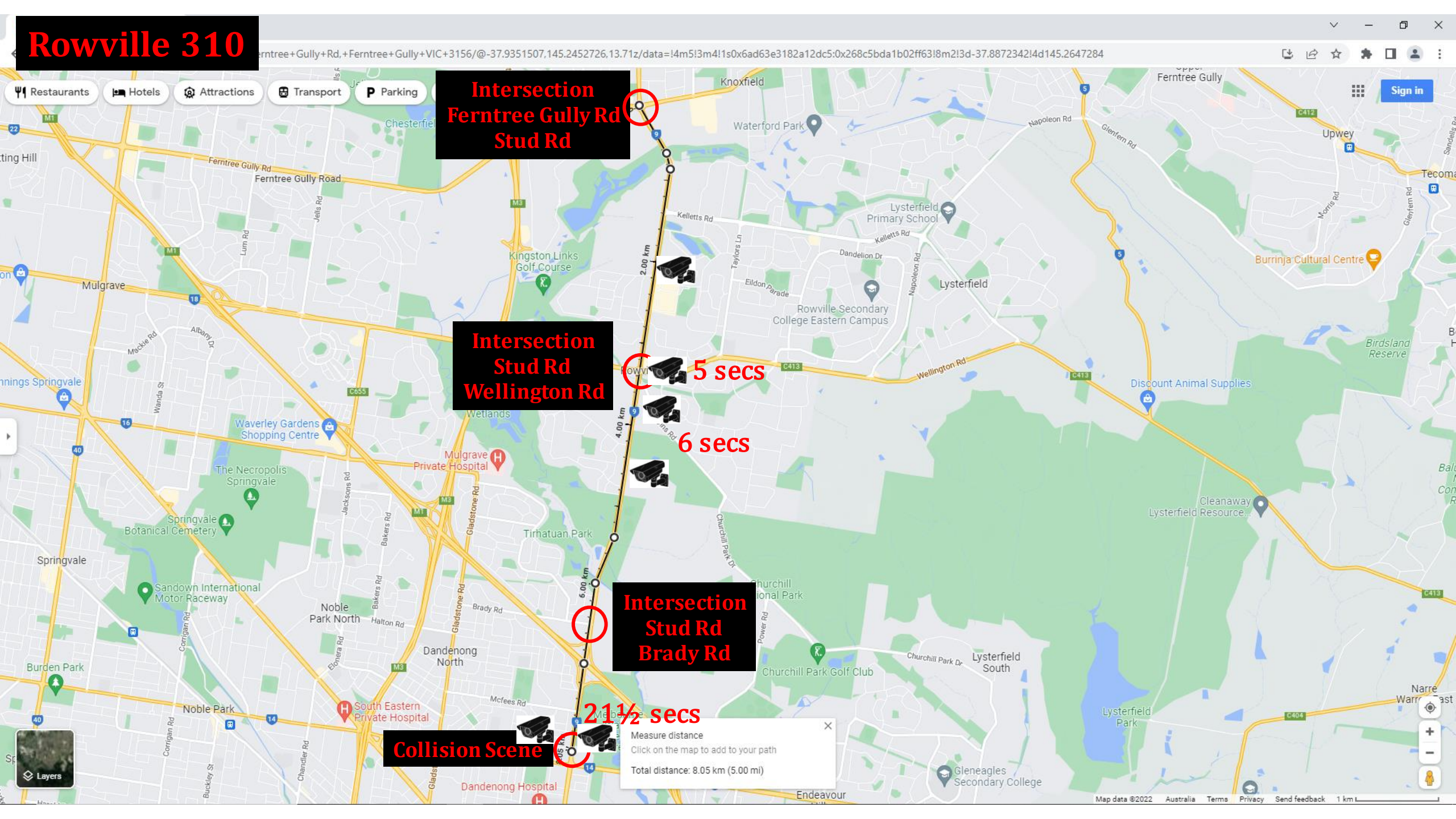
**Intersection
Stud Rd
Wellington Rd**

**Intersection
Stud Rd
Brady Rd**

Collision Scene

5 secs
6 secs

21½ secs
Measure distance
Click on the map to add to your path
Total distance: 8.05 km (5.00 mi)



Rowville 251

tree+Gully+Rd,+Ferntree+Gully+VIC+3156/@-37.9351507,145.2452726,13.71z/data=!4m5!3m4!1s0x6ad63e3182a12dc5:0x268c5bda1b02ff63!8m2!3d-37.8872342!4d145.2647284

Restaurants Hotels Attractions Transport Parking

**Intersection
Ferntree Gully Rd
Stud Rd**

**Intersection
Stud Rd
Wellington Rd**

**Intersection
Stud Rd
Brady Rd**

Collision Scene

1 min 10 secs

Measure distance
Click on the map to add to your path
Total distance: 8.05 km (5.00 mi)

