



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2020 1612

FINDING INTO DEATH AFTER INQUEST OF PHILLIP PIERSON

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

Findings of:	Deputy State Coroner Jacqui Hawkins
Delivered on:	18 August 2023
Delivered at:	Coroners Court of Victoria 65 Kavanagh Street, Southbank, Victoria, 3006
Counsel Assisting:	Mr Lindsay Spence, Principal In House Solicitor instructed by Ms George Carrington, Coroner's Solicitor, Coroners Court of Victoria
Counsel for Ms Donna Pierson	Mr Michael Stanton of Counsel and Jay Chandramohan, Associate Public Defender (Civil), instructed by Victoria Legal Aid
Chief Commissioner of Police:	Mr Andrew Imrie of Counsel, instructed by the Victorian Government Solicitor's Office
Catchwords:	DEATH IN POLICE PRESENCE, POLICE INTERCEPT, POLICE CONDUCT, POLICE PURSUIT, VICTORIA POLICE MANUAL

BACKGROUND

1. Phillip John Pierson was of Aboriginal descent and was 46 years of age when he passed away on 21 March 2020 in a motorcycle accident on Plantation Street, Mildura. He is survived by his loving wife Donna Pierson, their three children, his mother Jenine Preece, and two younger step-sisters, Vikki and Natasha. Phillip's natural father remained unknown to him throughout his life.
2. In October 1993, Phillip married Shannon Felstead and they later had a son, Kyle. Regrettably two-and-a-half years after they married, Shannon took her own life which had a devastating impact on Phillip. His life spiralled downhill into illicit drug dependence funded through criminal activity resulting in a multitude of criminal convictions and lengthy periods of incarceration.
3. In 2004 Phillip re-married Donna Pierson and they had three children. Due to a range of circumstances Donna's mother was granted custody of them. Phillip had known Donna since they were about 10 years old as she lived locally to him and they went to the same primary school. Donna described their relationship as strong and that Phillip was her best friend. She said they were dependent on each other.
4. In the days leading up to Phillip's passing he was bailed from Broadmeadows Magistrates Court to Donna's sister's residence in Irymple, with Donna staying at her mother's residence in Mildura. Phillip travelled to see Donna but quickly left because she wouldn't give him any money. She said he gave her a kiss, said he loved her, and took off. She did not see Phillip again.

CORONIAL INVESTIGATION

Jurisdiction

5. Phillip's death constituted a '*reportable death*' pursuant to section 4(2)(a) of the *Coroners Act 2008* (Vic) (**Coroners Act**), as his death occurred in Victoria and it appeared to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from an accident or injury.
6. The evidence in this case was unclear as to whether Phillip immediately before death was a person placed in custody or care pursuant to section 4(2)(c) of the Coroners Act. The definition of a "person placed in custody or care" relevantly at subsection 3(j) means a person who a police officer is attempting to take into custody or who is dying from injuries

sustained when a police officer attempted to take the person into custody. On the basis of this ambiguity, I determined to conduct an Inquest.

7. The jurisdiction of the Coroners Court of Victoria (**Coroners Court**) is inquisitorial.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.
8. The cause of death refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
9. 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.
10. 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.
11. Coroners are empowered to:
 - (a) report to the Attorney-General on a death;
 - (b) comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; 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.
12. These powers are the vehicles by which the prevention role may be advanced.

¹ Section 89(4) *Coroners Act 2008*.

13. It is important to stress that coroners are not empowered to determine the civil or criminal liability arising from the investigation of a reportable death and are specifically prohibited from including a finding or comment or any statement that a person is, or may be, guilty of an offence.² It is not the role of the coroner to lay or apportion blame, but to establish the facts.³

Standard of Proof

14. All coronial findings must be made based on proof of relevant facts on the balance of probabilities.⁴ 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 proved.⁵
15. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁶ 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.
16. 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.⁷ 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.⁸

Sources of evidence

17. This Finding draws on the totality of the material obtained in the coronial investigation of Phillip's passing. That is, the court file, the Coronial Brief⁹ and any further material obtained by the Coroners Court, together with the transcript of the evidence adduced at Inquest and the submissions hearing.

² Section 69(1). 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.

³ *Keown v Khan* (1999) 1 VR 69.

⁴ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

⁵ *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.

⁶ (1938) 60 CLR 336.

⁷ *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at pp 362-3 per Dixon J.

⁹ Coronial Brief tendered at Inquest as version 3.2 (updated 12/04/2023).

18. In writing this finding, I do not purport to summarise all the material evidence but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity. The absence of reference to any particular aspect of the evidence should not lead to the inference that it has not been considered.

CIRCUMSTANCES OF PHILLIP'S DEATH

19. Sometime on Saturday 21 March 2020 Phillip left his friend, Aaron Starr's house. Without his knowledge, Phillip took Mr Starr's unregistered motorbike that he had been building, along with his helmet, jacket and riding pants. Mr Starr stated that the bike was almost completed at the time of the crash, but it was far from safe to ride.¹⁰ The motorcycle wasn't registered or roadworthy. He considered it needed a lot more work to make it safe. Mr Starr was concerned about Phillip's safety, because he knew he had used ice and cannabis the previous night.¹¹
20. Between 5-5.30pm on the afternoon of 21 March 2020, Phillip attended his mother's house where his uncle, Michael Pierson was also present. Ms Preece was shocked to see him as she hadn't seen him for around six years. In her opinion, Phillip seemed like he was badly affected by drugs, as he was aggressive and hard to understand. Michael Pierson asked Phillip to leave and they yelled at each other. Mr Pierson and Phillip had a physical dispute, and then Phillip rode off on the motorbike.¹²
21. At 5.36pm D24 Police Communications broadcast a job in respect of this altercation with Constable Taylor Jackson and First Constable Jordan Gallagher-Lyon attending. Michael Pierson reported that Phillip had attended his home that afternoon, had an argument, punched him to the head and made numerous threats prior to leaving the address on a black motorcycle bearing registration plates BW771.¹³ Whilst Michael Pierson indicated that he was not in fear of Phillip and did not want him to be charged, Sergeant (Sgt) Adam Jepson who was also in attendance determined it was appropriate to apply for a Family Violence Intervention Order Application and Summons to protect Michael.¹⁴
22. The same afternoon Phillip attended his mother-in-law, Christine Walter's residence in breach of formal Court orders. In Ms Walter's opinion he appeared to be drug affected and unsteady on the motorbike. She noted Phillip did not know how to ride a motorbike.¹⁵

¹⁰ Exhibit A, Coronial Brief, p 56.

¹¹ Exhibit A, Coronial Brief, p 56.

¹² Exhibit A, Coronial Brief, p 33.

¹³ Exhibit A, Coronial Brief, p 86.

¹⁴ Exhibit A, Coronial Brief, p 90.

¹⁵ Exhibit A, Coronial Brief, p 47.

23. At approximately 6.40pm, Phillip went to his friend, Shannon Hagen's home and spoke to Shannon's girlfriend, Krystal Kerr. Phillip was seen riding a motorcycle. Krystal stated that in her opinion he seemed okay but found him hard to understand as he talked very fast and mumbled.¹⁶ Whilst Shannon wasn't home at the time, he made a statement and said that he knew Phillip didn't have a licence and had never actually seen him drive a car, let alone ride a motorbike.¹⁷
24. On Saturday 21 March 2020, Sgt James Oriel, Leading Senior Constable (**LSC**) Gregory Lee and Senior Constable (**SC**) Wesley Ayson were rostered from 6pm to 2am the following morning. The officers were tasked to Operation Krypton in and around the Mildura and Sunraysia area. Operation Krypton was primarily focused on targeting drink driving offences as well as providing a visible police presence by performing vehicle intercepts, licence checks, and a range of other policing duties. That evening the three Victoria Police members were within an unmarked white Hyundai Santa Fe wagon with SC Ayson driving, utilising the call sign Mildura 850 (**Mildura 850**).
25. Shortly after 7.00pm, SC Ayson was either entering or stationary within the centre median of Deakin Avenue waiting to conduct a U-turn to travel south-west towards Irymple. As they were giving way to approaching traffic, SC Ayson observed a solo motorbike rider from approximately forty metres away.
26. As the motorbike passed their location, SC Ayson and Sgt Oriel noticed that there was no registration plate displayed in the normal location on the rear mudguard but saw that there was something under the rear guard and forward of the rear wheel. The Police members agreed that it would be worthwhile conducting a registration check on the motorbike.
27. SC Ayson completed the U-turn and headed southbound on Deakin Avenue with the motorbike approximately 100-120 metres ahead of it by this stage. He accelerated to close the distance on the motorbike to be able to read the registration plate and came up to be within approximately ten metres behind the motorbike as they approached Plantation Street. In Sgt Oriel's opinion "the bike did not increase its speed and the rider didn't look back or change his behaviour in any way to indicate that he was aware of our presence."¹⁸ He could see the bike in the right-hand lane and it was maintaining its speed.
28. Sgt Oriel was the front passenger in Mildura 850 and commenced a registration check on the motorcycle using his IRIS device as the rider began to slow down approaching a break in the median strip for a right hand turn into Plantation Street. As the rider moved into the

¹⁶ Exhibit A, Coronial Brief, p 66.

¹⁷ Exhibit A, Coronial Brief, p 64.

¹⁸ Exhibit A, Coronial Brief, p 104.

centre median strip to turn right, SC Ayson noticed that there was no right indicator made. However in his opinion “there was nothing erratic about it. There was nothing unusual about the rider’s actions at this point”.¹⁹

29. The rider turned right into Plantation Street followed by SC Ayson who intended on intercepting the rider in Plantation Street. As he travelled across Deakin Avenue into Plantation Street, SC Ayson activated the internal dashboard mounted lights on the unmarked vehicle. SC Ayson observed that “as the solo negotiated the spoon drain the rider seemed a bit unsteady and had to momentarily regain balance after negotiating the spoon drain on a slight angle.”²⁰ SC Ayson had driven through this location on multiple occasions and was aware that “you could not negotiate the spoon drain at any real speed. It had to be negotiated slowly due to the sharpness of it”.²¹
30. Upon completing the right-hand turn and entering Plantation Street, SC Ayson observed that the rider had accelerated and sped away and was no longer in sight having disappeared out of sight around a left-hand bend. SC Ayson negotiated the spoon drain with his lights still activated with Sgt Oriel requesting a registration check over Police radio due to his IRIS device not returning any results.²²
31. Eyewitness Trent Surgey was standing at his residence past the left-hand bend in Plantation Street. He was standing at the driver’s side of his car when he saw a black sports type motorbike. He noted “the rider looked to be out of control on the other side of the road. Instead of going through the traffic island it looked like he tried to go up the footpath on the other side of the road. It looked like it hit the gutter instead of going up the footpath.”²³ The rider and the bike then collided with the fence.
32. Jarrod Dowler was standing with Mr Surgey and stated that he saw a black motorbike “on the wrong side of the road, travelling at high speed”.²⁴ He thought it looked he was trying to avoid the traffic obstruction in the road. When he hit the gutter the rider was airborne off the bike and then hit the fence.²⁵
33. Eyewitness Bradley Smith said he could hear a motorbike coming flying down Plantation Street and as the motorbike approached the island to slow traffic, he could see he was

¹⁹ Exhibit A, Coronial Brief, p 97.

²⁰ Exhibit A, Coronial Brief, p 98.

²¹ Exhibit A, Coronial Brief, p 98.

²² Exhibit A, Coronial Brief, p 98.

²³ Exhibit A, Coronial Brief, p 72.

²⁴ Exhibit A, Coronial Brief, p 78.

²⁵ Exhibit A, Coronial Brief, p 78.

going too fast. He looked like he realised he wasn't going to make it and then mounted the curb.

As the bike hit the curve, the front tyre came up in the air as the rear wheel of the bike hit, it went up in the air. This put the whole bike in the air ... the bike continued straight towards the fence. He had no control at this stage as the bike went up in the air. The bike had crashed into the fence.²⁶

34. SC Ayson negotiated the left-hand bend at or under the speed limit and travelled further along Plantation Street, aware that he was approaching a number of traffic islands. As he slowed he observed a black helmet on the footpath and then observed the motorbike on its side approximately 20 metres away on the footpath on the right hand side of Plantation Avenue. SC Ayson immediately stopped the Police vehicle, activated his Body Worn Camera (**BWC**) and exited the vehicle. The officers located Phillip lying on the footpath, unconscious and with significant neck injuries.
35. The three Police members immediately rendered first aid to Phillip whilst radioing for assistance however were unable to locate any pulse. Regrettably, upon the arrival of Ambulance Victoria it was determined that Phillip had suffered catastrophic injuries and had passed away.
36. Shortly thereafter Sgt Jepson (**Mildura 251**) arrived and a crime scene was established with both primary and secondary cordons. S/Sgt Bowen (**Mildura 265**) the Divisional Patrol Supervisor arrived on scene sometime later.
37. A Critical Incident was declared with all three members involved undergoing mandatory blood and alcohol testing that later returned negative results.
38. At the time of the motorcycle accident the weather was fine, visibility was good, traffic conditions were light and there were no environmental factors identified that would have contributed to the accident.

MAJOR COLLISION INVESTIGATION UNIT

39. In the early hours of the morning of 22 March 2020 members of the Major Collision Investigation Unit (**MCIU**) led by Detective Acting Sergeant (**D/A/Sgt**) Leigh Miller arrived at the crime scene and conducted a full forensic crime scene examination.
40. The collision occurred on Plantation Street at the intersection with Alicia Court. Plantation Street is a residential area. The road surface was sealed bitumen in excellent condition. The

²⁶ Exhibit A, Coronial Brief, p 84.

speed zone was 50km/h due to the dense housing on both sides of the street. The outer edges of the roadway were abutted by raised concrete gutters and beyond that grass nature strips and concrete footpaths.

41. The property of 34 Plantation Street was situated on the north east corner of the intersection of Plantation Street and Alicia Court with frontage onto both roads. A brick pillar fence with spiked metal picket partitions between the brick pillars was erected along the front boundary of this property. There was damage to several metal pickets within the southernmost fence partition on Plantation Street. Several of the spiked tops of the metal pickets had broken off, the brick pillar on the southern end had scrape marks visible laterally across it, the lower attachment points of the metal frame were dislodged from its mountings on the brick pillar and several metal pickets were bent. The MCIU considered the damage was consistent with being impacted by a motorcycle and a body at speed.
42. A black full-face motorcycle helmet was located on the grassed nature strip on the opposite side of Plantation Street. A black Honda CBR 600 motorcycle displaying registration BW771 was lying on the grassed nature strip to the north of the deceased's rest position. This motorcycle had sustained extensive frontal damage. The handlebars were broken off at the triple clamp, the instrument cluster was dislodged, the front wheel rim was buckled, and both tyres were deflated. The upper parts of the front forks were twisted rearward and there were scrape marks to the right-side lower sub frame, adjacent to the radiator. The MCIU considered the damage was consistent with being caused by impacting the brick and metal fence.
43. The unmarked white Hyundai Santa Fe station wagon (Mildura 850) was examined, and no visible damage was located.
44. At a later date Detective Sergeant (**D/Sgt**) Hay of the Victoria Police Collision Reconstruction Unit provided an opinion on the basis of material supplied to him. He opined that:

At approximately 7.28pm on Saturday 21 March 2020 a black Honda CBR600 (BW771) was travelling west along Plantation Street, Mildura. For an unknown reason the rider failed to negotiate a left hand curve which led into a traffic calming device. The motorcycle mounted the kerb near the intersection of Alicia Court. The rider applied emergency braking to the front wheel only and the motorcycle skidded for a short distance causing the rider to be catapulted off the motorcycle before impacting the barbed top of a metal fence. The rider suffered fatal injuries. The motorcycle slid 7.8 metres to rest after impacting the fence.²⁷

²⁷ Exhibit A, Coronial Brief, p140.

45. After conducting extensive investigations, D/Sgt Hay determined the motorcycle was travelling at a minimum speed of 27-34 km/h when it rebounded from the fence however was unable to account for the speed lost in the collision with the fence and any braking which may have occurred prior to the collision.
46. At a later date, Brett Gardner of the Victoria Police Mechanical Investigation Unit conducted a mechanical examination upon the Honda motorcycle concluding that his examination did not reveal any mechanical fault or failures with this vehicle which would have caused, or contributed to, the collision.
47. The investigation confirmed that SC Ayson who was driving the police vehicle held a Full Silver Approved Driving Authority (ADA) and was driving a Silver Classified Victoria Police Vehicle.
48. The D24 communications in respect of the events of that evening were reviewed. At 7.27pm and 46 seconds Mildura 850 commences a broadcast: "Can you run a rego for us on a solo, thanks. Bravo, Whiskey, 771," with Police Communications replying, "Vic solo, it's not coming up". Mildura 850 then broadcast "Yeah, can we get some assistance down at Plantation Way, intersection of Alicia Court. We just saw that solo, we've lit him up, he's taken off and he's come off, he's code 12 and 16, he's going to need ambulance urgently".
49. Later within the D24 communications Mildura 850 (Sgt Oriel) broadcast:

The situation is that we've seen this solo travelling southbound on Deakin Avenue in Mildura. We've pulled up behind the solo and obtained a registration. Once it's turned from Deakin onto Plantation – after it's cleared that intersection it's taken off at a fast rate of speed. We've lost sight of it almost instantly, given bends in the road, we've activated our lights once on Plantation and we've come across it a matter of seconds later, it's come to grief.
50. CCTV footage was reviewed from The Mildura Inlander Resort located at 373-383 Deakin Ave (approximately 400 metres from Plantation Street) that captured a seven second separation between the motorcycle and unmarked Police vehicle.
51. CCTV footage was also obtained and reviewed from two cameras at The Comfort Inn located at 413-427 Deakin Avenue. The footage indicated the following:
 - a. The footage from a camera mounted at the main driveway (camera 11) captured the motorcycle travelling south west on Deakin Avenue at 19.27.32 hours with the unmarked Police vehicle passing the same position 2 seconds later. The distance from The Comfort Inn to Plantation Street is approximately 150 metres. This is

consistent with the evidence of the Officers that they had accelerated along Deakin Avenue to close the distance and conduct a registration check on the motorcycle.

- b. The footage from a camera mounted at the southern driveway of The Comfort Inn (camera 5) captured both vehicles travelling south-west on Deakin Avenue approximately 50 metres prior to Plantation Street. The footage shows the motorcycle at 19.27.39 hours with the police vehicle directly a second behind the motorcycle at that position.
 - c. The footage also captured the two vehicles travelling north-west along Plantation Street. The footage shows the motorcycle at 19.27.49 hours with the unmarked police vehicle passing the same position some six seconds later and is consistent with the evidence of the Officers of the motorcycle accelerating away from them as they entered Plantation Street.
52. Checks conducted with VicRoads confirmed that Phillip was not and never had been licensed under the *Road Safety Act 1986* to ride a motorcycle. Further checks revealed that the motorcycle that Phillip had been riding was unregistered; the registration having expired in August 2005.

IDENTITY OF THE DECEASED

51. Phillip John Pierson was identified through Victoria Police Fingerprint Identification analysis as detailed in the Identification Report dated 25 March 2020.
52. Phillip's identity was not in dispute and required no further investigation.

MEDICAL CAUSE OF DEATH

53. On 25 March 2020 Dr Brian Beer, Forensic Pathologist at the Victorian Institute of Forensic Medicine conducted an external examination on Phillip's body and reviewed the Victoria Police Report of Death Form 83 and a post-mortem computed tomography (CT) scan.
54. Post-mortem toxicology detected the presence of methylamphetamine, amphetamine and delta-9-tetrahydrocannabinol in a blood sample taken from Phillip's body.
55. Dr Beer formulated the cause of death as 1(a) multiple injuries sustained in a motorcycle incident.

56. Dr Jason Schreiber, a Forensic Physician at VIFM provided an opinion about the level of drugs found in Phillip’s system. He reported “the methamphetamine level found in his blood was very high and the effects were highly likely to impact on his riding. The methamphetamine blood levels after death may be quite similar to the ones he had before he died. He also had at least one other drug in his system, that is, venlafaxine, which was likely to compound the adverse effects.”²⁸
57. Methamphetamine at this level, on its own or in connection with a cocktail of other drugs, in relation to riding a motorcycle, and the known effects of the drugs, had created an appreciable risk such that Mr Pierson’s riding would have posed a risk to himself and to the public.²⁹

CORONIAL INQUEST

58. As already discussed, the evidence was unclear as to whether or not this case required a mandatory inquest pursuant to s52(2)(b) Coroners Act where the deceased was, immediately before death, a person placed in custody or care. Therefore, I used my discretionary powers pursuant to s 52(1) of the Coroners Act to conduct this Inquest.
59. The coronial inquest commenced on Monday 17 April 2023 at Mildura for three days, with a submissions hearing held in Melbourne on 8 May 2023.
60. The following four witnesses were called to give oral evidence at the inquest:
 - a. Senior Constable Wesley Ayson;
 - b. Senior Sergeant James Oriel;
 - c. Mr Gregory Lee, (retired Leading Senior Constable);
 - d. Sergeant Adam Jepson.
61. On the last day of the Inquest, I conducted a view of the scene with the legal representatives of the Interested Parties. The view included driving the route taken by Mildura 850 on the day of the incident from McDonalds on Deakin Ave to Plantation Street.

SCOPE OF INQUEST

²⁸ Exhibit A, Coronial Brief, p 314.

²⁹ Exhibit A, Coronial Brief, p 314.

62. The Coronial Inquest examined the following issues:
- a. The factual circumstances and appropriateness of the conduct of Mildura 850 between first sighting the motorcycle ridden by Phillip Pierson on Deakin Avenue, and the subsequent collision in Plantation Street including:
 - i. The decision by Mildura 850 to follow the motorcycle; and
 - ii. The conduct of Mildura 850 in attempting to intercept the motorcycle; and
 - iii. Whether at any time Mildura 850 initiated a pursuit of the motorcycle (and further if a finding is made that a pursuit was initiated, whether the initiation of a pursuit and the subsequent conduct of Mildura 850 complied with Victoria Police policy and procedures).

63. Counsel for the family submitted there were five particular phases of this incident:

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|-----------|--|
| Phase I | The decision to follow the motorcycle, where it was when the occupants of Mildura 850 first saw the motorcycle ridden by Mr Pierson and why was the decision initially made to follow it. |
| Phase II | What if anything did the occupants of Mildura 850 know about the motorcycle at the time; did one or more of the occupants of Mildura 850 know the motorcycle was linked to Aaron Starr. |
| Phase III | The manner of Mildura 850 accelerating to catch up to the motorcycle; why was the decision made to accelerate; how fast did Mildura 850 travel to catch up to the motorcycle and did it exceed the speed limit in doing so; if so, was that appropriate and justified? |
| Phase IV | The activation of lights on Mildura 850; when did this occur; what was the purported justification for activating the lights; what road hazards were present; was Mr Pierson aware of the activation of the lights; did Mr Pierson take steps to evade police before or after lights were activated or at all; what contemporaneous representations about this were made at the scene; and was the pursuit initiated by Mildura 850 before Mr Pierson's death. |
| Phase V | Communications shortly after the incident; were the occupants of Mildura 850 surprised to learn at the scene that the rider of the solo was Mr Pierson and if so why; were the proper procedures followed at the scene in the |

immediate aftermath of the collision with regards to the conduct of the occupants of Mildura 850 and with regard to the oversight provided by Mildura 850 and, if not, has that conduct affected the reliability of statements that have been produced in respect of a number of matters.

The appropriateness of conduct of Mildura 850

Phase I & II - Decision to follow Mr Pierson's motorcycle and knowledge of rider and/or motorcycle

64. The occupants of Mildura 850, SC Ayson, Sgt Oriol and LSC Lee were in a Hyundai Sante Fe motor vehicle conducting a traffic operation for Operation Krypton. The purpose of that operation was to target drink drivers and any other traffic related offences in the area.³⁰ Their intention was to head towards the Irymple Pub, to sit off that location and observe and target drink drivers.³¹
65. On the way to Irymple, at around 7.25pm SC Ayson who was driving Mildura 850 exited McDonalds (395 Deakin Ave), turned left into Deakin Avenue and travelled north-east, until the next centre cut-away where he was intending to do a u-turn³² at Aldinga Drive which was about 300 metres away.³³
66. The three members of Mildura 850 stated they first observed the motorcycle which was also described throughout the evidence as a 'solo' as they were entering or stationary in the cutaway at Aldinga Drive, whilst giving way to traffic.³⁴ SC Ayson estimated he saw the solo when it was about 40 metres away. He commented that it appeared to be travelling at the speed limit and there was nothing untoward about it at that point. He said "the rider was wearing a black helmet and a black t-shirt with an open jacket which was flaying back a bit."³⁵ The flapping jacket stood out to him.
67. The occupants of Mildura 850's attention was drawn to the bike because it appeared to have no rear registration plate.³⁶ Apart from the lack of noticeable registration plate, there was nothing in respect of the motorcycle's speed nor its riding behaviour that raised concerns.³⁷ The decision to follow the motorcycle was consistent with the requirements of Operation Krypton. SC Ayson explained "the fact that it was a traffic operation and that

³⁰ Transcript of evidence, p 20.

³¹ Transcript of evidence, pp 34, 35, 170.

³² Transcript of evidence, p 36.

³³ Transcript of evidence, p 177.

³⁴ Transcript of evidence, p 39.

³⁵ Transcript of evidence, p 38.

³⁶ Transcript of evidence, p 185.

any vehicle that we would see without a number plate, or something looking unusual, would be worth a check.”³⁸

68. As the motorcycle passed them, SC Ayson’s vehicle was in the cutaway and he pulled out and turned right into Deakin Avenue with the intention of intercepting the solo.³⁹ At some stage, LSC Lee in response to the sighting suggested it “would be worth a check”.⁴⁰ SC Ayson determined that he needed to try and locate the licence plate⁴¹ and he said he began to make plans to intercept the solo.⁴² All the occupants of Mildura 850 agreed this was the proposed approach.⁴³
69. The evidence of all three members of Mildura 850 was that they did not recognise the rider, nor were they able to identify their sex, race, or ethnicity.⁴⁴ SC Ayson and Sgt Oriel both said they did not recognise the motorcycle or have any prior interactions with it.⁴⁵ SC Ayson’s evidence was that he was aware of intelligence circulations in respect of motorcycles generally within the Mildura area but could not remember specifics or particulars in relation to a type or colour of motorcycle.⁴⁶ It wasn’t until LSC Lee saw the motorcycle’s side profile as it entered Plantation Drive, that he thought it looked like a motorcycle he’d seen earlier in the night,⁴⁷ and he assumed it was heading to Aaron Starr’s house at Eleventh Street, which is where he had sighted it.⁴⁸ However, neither SC Ayson and Sgt Oriel recall this.⁴⁹
70. Counsel Assisting submitted that the decision to follow was reasonable and appropriate, especially in the context of a drink driving and traffic enforcement operation. Other than the obscured number plate, there was nothing in respect of the motorcycle’s speed or driving behaviour that raised any concerns. It was submitted that none of the occupants of Mildura 850 recognised or identified the rider. They did not recognise the motorcycle and had had no prior interactions with it. Whilst LSC Lee later recognised the motorcycle as

³⁷ Transcript of evidence, pp 41, 91, 92, 182, 235, 278.

³⁸ Transcript of evidence, p 43.

³⁹ Transcript of evidence, p 46.

⁴⁰ Transcript of evidence, pp 42, 43, 90, 282

⁴¹ Transcript of evidence, p 46.

⁴² Transcript of evidence, p 48.

⁴³ Transcript of evidence, p 185.

⁴⁴ Transcript of evidence, pp 39, 40, 180, 278, 282,

⁴⁵ Transcript of evidence, p 41.

⁴⁶ Transcript of evidence, pp 40, 41, 83-4.

⁴⁷ Transcript of evidence, p 278.

⁴⁸ Transcript of evidence, p 278.

⁴⁹ Transcript of evidence, pp 90, 239-40.

one he had seen earlier that recognition didn't occur until the motorcycle was in Plantation Drive and the other two members had no knowledge of that.⁵⁰

71. Counsel for the Family broadly agreed with Counsel Assisting's submissions, save for the fact that LSC Lee had prior knowledge of the motorcycle, but accepts the two other officers had no recollection of this.⁵¹
72. Counsel for the Chief Commissioner of Police agreed with Counsel Assisting.

Phase III - The manner of Mildura 850 accelerating to catch up to the motorcycle

73. Once Mildura 850 had left the cutaway and turned south onto Deakin Avenue, a decision was made to catch up to the motorcycle to try to identify if it had a registration plate and if so, the specifics of it.⁵² SC Ayson described his intention was to "to get close enough ... to obtain the licence plate so then we could run a registration check on the licence plate number, if there was one".⁵³ To do this, he had to speed up. Sgt Oriel's evidence was that they were "able to gain ground on the motorbike without any real issues".⁵⁴
74. None of the Police members were prepared to give an estimate of how far the motorcycle was ahead of them when Mildura 850 first entered Deakin Avenue.⁵⁵ However, CCTV from The Mildura Inlander Resort captured a time separation between the two vehicles of about 6-7 seconds, which equated to a distance of about 100-120 metres assuming the motorcycle was travelling at the speed limit of 60 kmph.⁵⁶ Sgt Oriel agreed with this evidence, when the CCTV was played in Court.
75. The evidence reveals that Mildura 850 had to speed to catch up to the motorcycle. However, none of the police members were aware of the speed they were travelling along Deakin Avenue.⁵⁷ SC Ayson accepted that he was travelling faster than the surrounding traffic and was exceeding the speed limit.⁵⁸ Sgt Oriel admitted that they wouldn't have closed the distance if they weren't going faster than the traffic around them. LSC Lee

⁵⁰ Closing Submissions of Counsel Assisting dated 1 May 2023, p 4.

⁵¹ Submissions of the Family dated 1 May 2023, p 6.

⁵² Transcript of evidence, p 53.

⁵³ Transcript of evidence, p 54.

⁵⁴ Transcript of evidence, p 186.

⁵⁵ Transcript of evidence, pp 187, 282.

⁵⁶ Exhibit A, Coronial Brief, pp 548-9.

⁵⁷ Transcript of evidence, pp 53, 94.

⁵⁸ Transcript of evidence, pp 53, 94.

stated that he would be surprised if they were speeding,⁵⁹ but admitted that if they exceeded the speed limit, then that was urgent duty driving.⁶⁰

76. Counsel Assisting submitted that the evidence does not enable an accurate speed of Mildura 850 to be determined while travelling on Deakin Avenue due to a lack of in car video evidence. However, based on the CCTV footage and evidence of the members themselves, it is possible to find they were driving moderately faster than the surrounding traffic, motorcycle and the signposted speed limit of 60 km/h.⁶¹ No warning devices were activated in closing the distance with the motorcycle.⁶² Instead a silent approach was adopted which is consistent with police practice and the Victoria Police Manual (**VPM**).
77. ‘Urgent Duty Driving’ is defined in the VPM as 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 Rules 2009 in order to respond to an incident or to carry out their duties as a police member.⁶³ The VPM allows urgent duty driving during “active involvement in traffic enforcement, or the interception of a vehicle for an offence”.⁶⁴ Silent approaches are allowed under the VPM, subject to the police driver’s experience of the type of incident and their training and including a risk assessment as to what effect a ‘silent approach’ will have on other road users.
78. SC Ayson stated he engaged in urgent duty driving which breached the speed limit to catch up to the solo.⁶⁵ He was not familiar with the term ‘silent approach’ in the VPM.⁶⁶
79. When asked at Inquest whether conducting urgent duty driving but not activating lights was a risky approach, SC Ayson responded at the time he believed that he was acting in good faith, had a plan in place and had taken on board all the risk assessments that he needed to do to ensure a safe intercept.⁶⁷ Risks considered by SC Ayson included the surrounding traffic, safety to the public and the solo slowing down and turning.⁶⁸ Other considerations included that the road was dry, they had good visibility, light traffic, and he was familiar with the area.⁶⁹

⁵⁹ Transcript of evidence, pp 285, 301.

⁶⁰ Transcript of evidence, p 301.

⁶¹ Final Submissions of Counsel Assisting, p 5.

⁶² Transcript of evidence, pp 54, 186, 299.

⁶³ Exhibit A, Coronial Brief, pp 332.

⁶⁴ Exhibit A, Coronial Brief, pp 332.

⁶⁵ Transcript of evidence, p 95.

⁶⁶ Transcript of evidence, p 95.

⁶⁷ Transcript of evidence, p 99.

⁶⁸ Transcript of evidence, pp 95-6.

⁶⁹ Transcript of evidence, pp 143-4.

80. Once SC Ayson had crossed into Plantation Street, he determined it was a safe area to attempt to intercept.⁷⁰ No sirens were activated.⁷¹ In evidence, Sgt Oriel repeatedly refuted the proposition that their conduct was risky.⁷²
81. There was some conflict in evidence about the location of where Mildura 850 caught up to the motorcycle and where the registration was obtained. As they were approaching the Plantation Street cutaway, the motorcycle slowed down and SC Ayson said he was anticipating that it was possibly going to turn right at that intersection, however he didn't remember seeing brake lights or an indicator on the motorcycle.⁷³ SC Ayson's evidence varied slightly and he believed they caught up approximately 300 metres near the APCO Service Station but considered this was a rough estimate.⁷⁴ Sgt Oriel stated that "we could read the plate either right at the very end of our southbound travels on Deakin Ave or at the very commencement of the cutaway that is Plantation Street."⁷⁵ He explained they were very close to the motorcycle at the cutaway at Plantation Street.⁷⁶ It was at this point that Sgt Oriel was able to obtain the registration number.⁷⁷
82. The CCTV footage from The Comfort Inn shows the separation time had reduced to about two seconds and one second respectively from different camera angles.⁷⁸ I prefer SC Oriel's evidence in respect of this issue which is consistent with the CCTV footage.
83. Counsel Assisting submitted that the conduct of Mildura 850 as it drove along Deakin Avenue was reasonable and appropriate in the circumstances and was in accordance with policy.⁷⁹
84. Counsel for the Family submitted that lights should have been activated and an attempt to intercept should have been made on Deakin Avenue, given the hazards in Plantation Street. It was submitted that Mildura 850 did exceed the speed limit and engaged in urgent duty driving. It was further submitted that Mildura 850 did not properly consider the impact of the manner of the driving on the rider of the motorcycle.⁸⁰ I do not accept this proposition because there was clear evidence that SC Ayson and Sgt Oriel conducted appropriate risk assessments.

⁷⁰ Transcript of evidence, p 61.

⁷¹ Transcript of evidence, p 62.

⁷² Transcript of evidence, pp 243-4, 246.

⁷³ Transcript of evidence, p 58.

⁷⁴ Transcript of evidence, pp 52-3.

⁷⁵ Transcript of evidence, p 188.

⁷⁶ Transcript of evidence, p 285.

⁷⁷ Transcript of evidence, pp 56, 192.

⁷⁸ Exhibit A, Coronial Brief, pp 413-27, 550-3.

⁷⁹ Final Submissions of Counsel Assisting, p 7.

⁸⁰ Final Submissions of Counsel Assisting, p 7.

85. It was further submitted that the manner of driving in an unmarked police vehicle likely ‘spooked’ Phillip, which is what led him to make the abrupt right-hand turn into the cutaway at Plantation Street.⁸¹ I accept that this is possible, but there are other potential reasons for his sudden turn at Plantation Street, not the least of which was that he was affected by illicit drugs and was an unlicensed driver.
86. Counsel for the Chief Commissioner of Police accepted that Mildura 850 closed the gap by accelerating and exceeding the speed limit by a modest amount. The speed was likely to be in the range of approximately 75-80kmph. In doing so, they were able to obtain the registration number. It was submitted “the police conduct on Deakin Avenue was utterly routine and unremarkable”.⁸² The decision to obtain the registration number before conducting an intercept was a requirement of the VPM Pursuits Policy and “consistent with ordinary, sensible police practice”.⁸³ The urgent duty driving using a silent approach was “perfectly justifiable according to legal authority and applicable policy, and fell within the ambit of a reasonable risk assessment in all the circumstances.”⁸⁴ It was submitted the police should not be prevented from conducting low end urgent duty driving because of a speculative risk of a driver being ‘spooked’.⁸⁵ This would make every day policing activities unworkable. I accept this submission.

Phase IV - The activation of warning lights on Mildura 850 and attempted intercept

87. Once Mildura 850 caught up to the motorcycle they were able to obtain the registration number. Sgt Oriol stated “there wasn’t necessarily an initial commitment to intercept, plan for that intercept, my role is to conduct registration checks and get all of that information.”⁸⁶ This is consistent with the VPM Pursuits Policy that when planning to intercept a vehicle members should, where practicable: (i) obtain information and conduct all available checks on the vehicle and/or driver (if known) before attempting the intercept.⁸⁷ Sgt Oriol stated that “the more information you can get before you effect an intercept the better.”⁸⁸
88. Sgt Oriol entered the details into his IRIS device but was unable to get an immediate response.⁸⁹ Due to the delay for the request on the IRIS device, Sgt Oriol reverted to

⁸¹ Final Submissions of Counsel Assisting, p 7.

⁸² Submissions on behalf of Chief Commissioner of Police, p 4.

⁸³ Submissions on behalf of Chief Commissioner of Police, p 4.

⁸⁴ Submissions on behalf of Chief Commissioner of Police, p 4.

⁸⁵ Submissions on behalf of Chief Commissioner of Police, p 5.

⁸⁶ Transcript of evidence, p 191.

⁸⁷ Exhibit A, Coronial Brief, p 352.

⁸⁸ Transcript of evidence, p 241.

⁸⁹ Transcript of evidence, p 191.

request the registration check on police communications.⁹⁰ He said he recalled giving the registration number to the operator, but couldn't recall if he received a result.⁹¹ By the time the response came through Mildura 850 were well into Plantation Street.⁹² The BWC of SC Ayson revealed it was highly likely that Sgt Oriel broadcast the registration check right before the left hand bend at the end of Plantation Street, and immediately before where the accident occurred.⁹³ That was Sgt Oriel's final broadcast just before they came upon the accident.⁹⁴

89. SC Ayson's evidence is that as the motorcycle had left the cutaway and he was crossing over Deakin Avenue, prior to the spoon drain, he activated the lights.⁹⁵ The switches to operate the lights of this particular police vehicle were located in the middle console which requires the operator to physically look down to activate them to ensure they are pressing the right one.⁹⁶ To activate them the operator has to lift the console up to locate the three buttons, one for the lights, one for the siren, and the other to deactivate.⁹⁷
90. The warning devices are usually activated by the driver.⁹⁸ However, in this case the evidence was that SC Ayson and Sgt Oriel recalled they both attempted to activate the lights.⁹⁹ SC Ayson considered that every time he's driven a police vehicle he's been the person who has activated the lights because the decision to activate the lights and choice to intercept a vehicle is ultimately the driver's decision.
91. SC Ayson commenced the direction to stop or attempted the intercept as the motorcyclist crossed into Plantation Street.¹⁰⁰ The rationale for activating the warning lights was to attempt to intercept the motorcycle.¹⁰¹ In justifying this decision, Sgt Oriel stated "there was already the offence for the obscured plate, questionable registration and then the rider behaviour, ... with the revving and the acceleration, but ... predominantly it was for the registration offence".¹⁰²

⁹⁰ Transcript of evidence, p 195.

⁹¹ Transcript of evidence, p 197.

⁹² Transcript of evidence, p 198-9.

⁹³ Transcript of evidence, pp 199, 201.

⁹⁴ Transcript of evidence, p 200.

⁹⁵ Transcript of evidence, p 70.

⁹⁶ Transcript of evidence, pp 29, 173.

⁹⁷ Transcript of evidence, p 27.

⁹⁸ Transcript of evidence, p 28.

⁹⁹ Transcript of evidence, pp 61, 62, 206, 207.

¹⁰⁰ Transcript of evidence, p 76.

¹⁰¹ Transcript of evidence, p 61.

¹⁰² Transcript of evidence, p 220.

92. Proximate to the activation of the warning lights SC Ayson stated that when the rider went over the speed hump he wobbled from side to side and then gained good control.¹⁰³ Sgt Oriol did not observe any loss of control and thought that the rider was able to navigate both obstacles without difficulty. His only observation was that the motorcycle had to slow its speed and that there was a change in direction on the speed hump.¹⁰⁴ He conceded that he did not have full and continuous observations¹⁰⁵ on the bike the whole time because he was trying to operate the IRIS device, transmit on the radio, and assist to operate the lights. It all occurred within seconds.¹⁰⁶
93. Once the motorcycle went through the spoon drain and crossed the speed hump all three police members observed it to significantly accelerate along Plantation Street. In the time it took for SC Ayson to negotiate the spoon drain and the speed hump, the motorcyclist had already vanished.¹⁰⁷ SC Ayson said someone in the vehicle said “look out, he’s gone” and he looked up and the motorcycle was out of sight.¹⁰⁸ SC Ayson said “it happened so fast.”¹⁰⁹ Sgt Oriol stated that he lost sight of the rider between the speed hump, and the collision which was about 200 metres away.¹¹⁰
94. The sequence of events, in particular the activation of warning lights and the acceleration of the rider was an issue at inquest. The state of the evidence does not allow for findings to be made in relation to a precise sequence. Counsel Assisting submitted that there is insufficient evidence to determine that Mr Pierson’s sudden acceleration was a consequence of Mildura 850 activating its warning lights. Nor does the evidence support a finding that Mildura 850 activated its warning lights as a reaction to Mr Pierson.¹¹¹
95. Submissions on behalf of the family suggested that the chronology was clear, the lights were activated, there was awkward riding by Phillip as he navigated the spoon drain and speed hump area, and then the motorcycle took off, consistent with a deliberate evade.¹¹²
96. It was submitted on behalf of the Chief Commissioner of Police that the simple reality is that these events all occurred simultaneously or so close in time that the evidence does not permit a finding about the precise sequence.¹¹³ I agree.

¹⁰³ Transcript of evidence, p 101.

¹⁰⁴ Transcript of evidence, pp 203, 255.

¹⁰⁵ Transcript of evidence, p 225.

¹⁰⁶ Transcript of evidence, p 208.

¹⁰⁷ Transcript of evidence, p 76-7.

¹⁰⁸ Transcript of evidence, p 65.

¹⁰⁹ Transcript of evidence, p 64.

¹¹⁰ Transcript of evidence, p 211.

¹¹¹ Final Submissions of Counsel Assisting dated 1 May 2023, p 8.

¹¹² Submission of the Family dated 1 May 2023, p 7.

Was Phillip Pierson aware of the police?

97. An important issue examined at inquest was whether or not Phillip Pierson was aware of the police's presence.
98. Mildura 850 was an unmarked vehicle that had no external decals identifying it as a police vehicle.¹¹⁴ The vehicle's warning lights were fitted internally with a horizontal light bar. In evidence, Sgt Oriel indicated the lights on this particular vehicle were not particularly visible compared to other unmarked options.¹¹⁵ I observed this myself when we conducted a view during the Inquest. It was difficult to see the lights flashing on an unmarked vehicle during the daytime.
99. The vehicle was also fitted with a siren which was never activated.¹¹⁶
100. In evidence, SC Ayson said he had "no idea whether ... he ...even saw us. I didn't see any observations by the rider that he knew we were there."¹¹⁷ SC Ayson didn't see the rider turn his head "...there was no indications leading up to it that he knew that we were an undercover police vehicle".¹¹⁸ He maintained his position during extensive cross examination, "I didn't see any overt acts of looking back over his shoulder."¹¹⁹ Similarly, Sgt Oriel maintained that he "thought he was not aware of our presence and hadn't shown any head or mirror checks to show an interest in us, and he had also stayed at a slow enough rate of speed to allow us to get close enough on Deakin Avenue to obtain the registration."¹²⁰ LSC Lee had no recollection of the rider turning his head to look at their vehicle.¹²¹
101. Sgt Oriel considered there was significant ambiguity around whether Mr Pierson knew police were present. He did not observe any changes to the motorcyclist's behaviour.¹²² He stated "...the lights had been activated with that intent [to stop] but there's a ... significant point as both whether it was received, and there was a lot of doubt, if not probability, that it had been received and that's commonly the case with unmarked cars".¹²³

¹¹³ Submissions of the Chief Commissioner of Police dated 1 May 2023, p 5.

¹¹⁴ Transcript of evidence, pp 24, 173.

¹¹⁵ Transcript of evidence, p 173.

¹¹⁶ Transcript of evidence, p 186.

¹¹⁷ Transcript of evidence, p 74.

¹¹⁸ Transcript of evidence, p 75.

¹¹⁹ Transcript of evidence, p 150.

¹²⁰ Transcript of evidence, p 204.

¹²¹ Transcript of evidence, p 286.

¹²² Transcript of evidence, p 191.

¹²³ Transcript of evidence, p 221.

102. In evidence, Sgt Oriel gave several examples where drivers are unaware they are being intercepted, particularly in an unmarked police vehicle.
103. Counsel Assisting submitted that “there is significant uncertainty as to whether Mr Pierson was ever aware of the activation of the warning lights”.¹²⁴ A motorcycle mirror was located at the scene of the incident however the mere presence is insufficient to overcome the uncertainty that exists.¹²⁵
104. Counsel for the Family submitted that it should be found that Phillip was aware of and took deliberate steps to evade police before his death.¹²⁶ This was demonstrated by the manner Phillip took off after navigating the spoon drain and speed hump and the fact that he did not pull over and stop on Plantation Street.¹²⁷
105. Counsel for the Chief Commissioner of Police submitted that if Phillip was aware of the police presence behind him and able to maintain any observation of it while accelerating rapidly down Plantation Street, he could not have observed anything other than the fact of Mildura 850 completing the entry to Plantation Street as he disappeared around the corner.¹²⁸

Was a pursuit initiated?

106. One of the central issues examined at the Inquest was whether or not a pursuit was initiated by Mildura 850 after Phillip accelerated away from police, and the police’s subsequent conduct.
107. For context, it is important to outline the VPM Pursuits Policy which contains the following relevant excerpts:

2.2 Initial Considerations

VPMP Road policing outlines the considerations for mobile and static vehicle interceptions that will assist with the effective intercept of a vehicle.

When planning to intercept a vehicle members should, where practicable:

- obtain available information and conduct all available checks on the vehicle and/or driver (if known) before attempting the intercept
- Consider how they might respond if the vehicle fails to stop; see section 2.4

2.3 Giving a direction to stop

A direction to stop may include:

¹²⁴ Final Submissions of Counsel Assisting dated 1 May 2023, p 9.

¹²⁵ Final Submissions of Counsel Assisting dated 1 May 2023, p 9.

¹²⁶ Submissions of the Family dated 1 May 2023, p.4.

¹²⁷ Submissions of the Family dated 1 May 2023, p.4.

¹²⁸ Submission of the Chief Commissioner of Police dated 1 May 2023, p 6.

- a verbal direction, giving hand signals or displaying signs to the driver
- 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 direction may not have been understood consider alternative methods or issuing the direction.

2.4 Responding to vehicles that fail to stop

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:

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

3.2 Pursuit justification criteria

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; and

- other means for apprehending the vehicle occupant/s are not practicable; and
- the serious risk they are seeking to prevent or respond to is greater than the risks involved in conducting the pursuit at that time.

108. The evidence is clear that SC Ayson activated the lights in the police vehicle which constituted a direction to stop as per 2.3 from the Pursuits Policy. At no stage was the siren activated. After Phillip accelerated away and out of sight, SC Ayson continued to drive along Plantation Street, with the lights activated until they turned left around a sharp bend in the road and came upon the accident scene which was approximately 140 metres in distance from Deakin Avenue.
109. SC Ayson stated at the outset that a pursuit was not justified in the circumstances because they had only been following because of the unusual registration issue.¹²⁹ He added “the motorcycle has failed to pull over if he knew we were there or not, but there were no grounds for a pursuit for an unregistered motorcycle”.¹³⁰ It has to be serious offending for a pursuit to be commenced.¹³¹
110. SC Ayson denied increasing the speed of the police vehicle, or activating the siren, but accepted that the lights were left on as he continued to drive down Plantation Street.¹³²
111. SC Ayson’s evidence about these circumstances and whether it was a pursuit were convoluted and difficult to follow. Whilst SC Ayson was clearly aware of the Pursuits Policy, he was unable to adequately articulate how the circumstances of this incident applied and seemed to get tangled in some of the key concepts such as an evade and a pursuit. In evidence SC Ayson denied he initiated a pursuit.¹³³ In attempting to explain his actions, SC Ayson was convinced Phillip’s actions were an evade. In fact, he repeatedly

¹²⁹ Transcript of evidence, pp 75, 76.

¹³⁰ Transcript of evidence, p 76.

¹³¹ Transcript of evidence, p 76.

¹³² Transcript of evidence, p 76.

¹³³ Transcript of evidence, p 75.

explained that it “was an evade, but not a pursuit”.¹³⁴ He explained that “an evade and a pursuit are totally different situations”.¹³⁵ He said that “this was an evade every day of the week. That was not a pursuit.”¹³⁶

112. When questioned about operational aspects of relevant Victoria Police policy, SC Ayson was unable to meaningfully explain concepts such as the SAFE principles,¹³⁷ urgent duty driving and a silent approach,¹³⁸ or the pursuit criteria.¹³⁹ An example was when he was asked how he would initiate a pursuit he answered “by putting on... your lights and sirens and ... so then actively look and see if – that the person may have realised you’re there and then if the vehicle then, um takes off and speeds and doesn’t stop, um, it would be classed as a ... pursuit.”¹⁴⁰
113. The VPM Pursuits Policy specifically states when responding to vehicles that fail to stop “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 is required to discontinue the attempted intercept and not follow the vehicle or conduct a pursuit. Once Phillip disappeared away along Plantation Street, SC Ayson stated in evidence that “there was no following because that solo was already not in the street at all”.¹⁴¹ He then conceded he had continued down the street and around the corner before discovering the collision.¹⁴²
114. SC Ayson’s evidence was that his intention wasn’t to further pursue the vehicle, but his concern was to ensure nothing happened around that corner given the sharp bend in the road, and the rider’s speed.¹⁴³ He continued to explain that he was concerned because they couldn’t see around the corner, which is a highly populated area, with lots of chicanes to slow down traffic, and he “was concerned that for other’s wellbeing and safety of people on the road, as part of my risk assessment of the situation.”¹⁴⁴ SC Ayson said at the time he “was acting in good faith and good will in relation to the situation [he] found [himself] in”.¹⁴⁵

¹³⁴ Transcript of evidence, p 102, 104, 105, 111

¹³⁵ Transcript of evidence, p 75.

¹³⁶ Transcript of evidence, p 105.

¹³⁷ Transcript of evidence, p 82,

¹³⁸ Transcript of evidence, p 95.

¹³⁹ Transcript of evidence, p 112.

¹⁴⁰ Transcript of evidence, p 111.

¹⁴¹ Transcript of evidence, p 105.

¹⁴² Transcript of evidence, p 106.

¹⁴³ Transcript of evidence, p 115.

¹⁴⁴ Transcript of evidence, p 105.

¹⁴⁵ Transcript of evidence, p 116.

115. Contrary to SC Ayson, Sgt Oriel was able to meaningfully articulate and interpret the VPM Pursuits Policy. He believed that the broad pursuit justification criteria hadn't been met because there was no serious risk to health and safety of a person prior to the police involvement or prior to the intercept attempt.¹⁴⁶ He stated that a high-speed motorcyclist didn't meet the threshold for a pursuit and if it did meet the threshold, it didn't meet the risk assessment¹⁴⁷ aspect of the policy.
116. Sgt Oriel was emphatic that "a pursuit never occurred, and it was never going to occur".¹⁴⁸ He considered they had given a direction to stop, but they didn't know whether that direction had been received.¹⁴⁹ He explained the pursuit occurs at the point where we believe the person has received the direction to stop and doesn't.¹⁵⁰ Sgt Oriel stated:
- if you believe ... that the direction may not have been received, the policy allows you to consider other methods of giving that, most commonly a siren, unless you're going from verbal to lights, but in this case it would be from lights to the activation of the siren, and just maintain some observations and find out is this a case where, you know, someone is just accelerating as effectively just road user behaviour, or are they aware that we're there and they're not going to stop, or where is this going?¹⁵¹
117. Sgt Oriel stated that "most commonly in the fail to stops and pursuits with motorcycles, which I've been involved in, it's very, very common to see usually a head turn, or if you don't see a head turn you'll see a distinct movement from the helmet down to the mirror, and that's commonly associated to ... their awareness to your ... presence."¹⁵² Sgt Oriel stated whether Phillip was aware of the police presence remains ambiguous.¹⁵³ But at one stage during cross examination conceded "...if he's taking off that fast, perhaps he knew we were there."¹⁵⁴
118. Further, Sgt Oriel stated "in my view, that's the exact intent of the policy ... otherwise, there'd be literally hundreds of, ah, fail to stops or pursuits every day that – that really aren't; they just don't know you're there. It happens all the time".¹⁵⁵ Sgt Oriel commented that the policy has to "fit with reality and the real world",¹⁵⁶ and there are countless occasions where there is an initial non-compliance but in actual fact the driver is not aware

¹⁴⁶ Transcript of evidence, p 228.

¹⁴⁷ Transcript of evidence, p 228.

¹⁴⁸ Transcript of evidence, p 228.

¹⁴⁹ Transcript of evidence, p 229.

¹⁵⁰ Transcript of evidence, p 229.

¹⁵¹ Transcript of evidence, p 222.

¹⁵² Transcript of evidence, p 222.

¹⁵³ Transcript of evidence, p 224.

¹⁵⁴ Transcript of evidence, p 253.

¹⁵⁵ Transcript of evidence, p 226.

¹⁵⁶ Transcript of evidence, p 2544.

of police presence. Therefore, “if you were to remove that provision from the pursuit policy it would virtually be unworkable.”¹⁵⁷

119. Consistently throughout Sgt Oriel’s evidence he maintained that there was significant uncertainty in relation to whether the direction to stop had been received and/or understood. He said “there was a lot of doubt, if not probability, that it hadn’t been received and that’s commonly the case with unmarked cars”.¹⁵⁸ In evidence, LSC Lee agreed and stated “we’re making an assumption that he knew that the lights were on, or he could see us behind him”.¹⁵⁹
120. Sgt Oriel agreed that if the direction to stop was received by Phillip, then it was a failure to stop, pursuant to the policy,¹⁶⁰ but he considered there has to be some form of intent.¹⁶¹ He emphasised it was never the intention to pursue the motorbike.¹⁶²
121. Counsel Assisting submitted that whilst SC Ayson’s evidence was convoluted, the evidence of Sgt Oriel should be accepted, that is the attempted intercept along Plantation Street never progressed to a pursuit for (i) there existed significant uncertainty as to whether the direction to stop had been received and understood; and (ii) it was reasonable for Sgt Oriel *not* to conclude that Mr Pierson was taking deliberate action to avoid being stopped. It was submitted that when assessing the actions of police members, it is important to consider relevant Supreme Court authorities such as opined by Smith J. in *Walker v Hamm*.¹⁶³
- what is critical is that the issue of the reasonableness of the police officer’s conduct should be approached in a realistic manner and that due consideration is given to the reality that the officer has to make decisions quickly, often in emergencies and under pressure.¹⁶⁴
122. Counsel for the Family submitted that the evidence of SC Ayson should be preferred because he was the driver of the vehicle, which carries the most significance when considering whether a pursuit was initiated.¹⁶⁵ It was submitted by Counsel for the Family that it was a short pursuit.¹⁶⁶

¹⁵⁷ Transcript of evidence, p 254.

¹⁵⁸ Transcript of evidence, p 221.

¹⁵⁹ Transcript of evidence, p 305.

¹⁶⁰ Transcript of evidence, p 229.

¹⁶¹ Transcript of evidence, p 229.

¹⁶² Transcript of evidence, p 269.

¹⁶³ *Walker v Hamm* [2008] VSC 596 at [55]

¹⁶⁴ *Walker v Hamm* [2008] VSC 596 at [55]

¹⁶⁵ Submissions of the Family dated 10 May 2023, p 5.

¹⁶⁶ Submissions of the Family dated 10 May 2023, p 5.

123. Counsel for the Chief Commissioner of Police submitted that the Pursuits Policy “implicitly accepts that there can be scenarios where an attempted intercept is ongoing between an initial direction to stop that ‘may not have been understood’ and discontinuing an intercept”.¹⁶⁷ Assessment depends on all the circumstances of the case and the actions of the member involved. In this case, the relevant circumstances include “the absence of any indication that the rider was aware of the police presence, the timing of the activation of the lights, the acceleration and the accompanying uncertainty as to whether they had been observed, and the immediacy with which the rider disappeared from view.”¹⁶⁸

Phase V - Communications shortly after the incident

124. The circumstances of Phillip’s passing fell within the definition of a ‘death or serious injury/illness incident’, as per the VPM Death or Serious Injury/Illness Incidents involving Police.¹⁶⁹ This policy provides guidance on how to manage these types of incidents and includes separating police witnesses and instructing them not to discuss any issues arising from the incident with any other police member. This is to allow investigators an opportunity to obtain independent recollections of the incident and to lessen or negate any future allegations of contamination or collusion of evidence and to protect the integrity of the investigation.

125. In the initial moments after the incident, the three police officers constituting Mildura 850 should have been separated. I acknowledge there are aspects of being in a regional setting that made this difficult. Sgt Jepson was the first independent officer in charge to arrive at the scene and had to be appraised of the situation, so he could advise the chain of command and the MCIU. His role of forward commander required him to allocate resources at the scene and separate the police members. This did not occur for approximately 30-40 minutes.

126. At the time, Sgt Jepson was an Acting Sergeant and was inexperienced in relation to managing and identifying critical incidents.¹⁷⁰ The nature of the requirements of critical incident didn’t immediately occur to him. In evidence he stated “it certainly didn’t dawn on me, which it should have at the earliest opportunity that it would be deemed as a critical incident, not just a fatality.”¹⁷¹

¹⁶⁷ Submissions of the Chief Commissioner of Victoria Police dated 1 May 2023, p 7.

¹⁶⁸ Submissions of the Chief Commissioner of Victoria Police dated 1 May 2023, p 7.

¹⁶⁹ Exhibit A, Coronial Brief, p 595.

¹⁷⁰ Transcript of evidence, p 329.

¹⁷¹ Transcript of evidence, p 327.

127. Sgt Jepson agreed that there were times when police witnesses had an opportunity to converse with one another¹⁷² and conceded it was a failure on the night.¹⁷³
128. SC Ayson agreed that conversations about the incident after the events had the potential to contaminate evidence.¹⁷⁴ He explained that they are very short of staff in the country and on the night they were trying their best to lock down a critical incident as best they could, with the resources that they had.¹⁷⁵ He reflected “in hindsight ... we should have been separated earlier, but unfortunately, ... that was the circumstance we found ourselves in.”¹⁷⁶
129. Sgt Oriel accepted that speaking to Sgt Jepson in front of other witnesses was not best practice, but described the difficulties associated with multiple things occurring at once and being interrupted when he was trying to do a handover.¹⁷⁷
130. Sgt Jepson’s evidence demonstrated that he had reflected on the events of that evening. He candidly admitted the role of forward commander fell to him and he conceded he fell short that night.¹⁷⁸ Further, he said he “just didn’t appreciate that it was going to be investigated as a critical incident. That’s a failure, I should have recognised that from the onset (sic). But obviously lots of mistakes were made that night. Yes, I’d do a lot of things differently.”¹⁷⁹ In evidence Sgt Jepson stated that he now understands and appreciates what he would have to do.¹⁸⁰
131. In evidence, Sgt Oriel explained that the scene they came upon was upsetting and being involved in an incident like this causes an element of shock. He said if he could have his time again and he wasn’t in shock, he agreed it would have been preferable to achieve separation quicker than they did.¹⁸¹
132. Counsel Assisting submitted that whilst there was a risk of contamination or collusion, there was no evidence of it as recorded by the various BWC footage.

¹⁷² Transcript of evidence, p 333

¹⁷³ Transcript of evidence, p 334.

¹⁷⁴ Transcript of evidence, p 70.

¹⁷⁵ Transcript of evidence, p 136.

¹⁷⁶ Transcript of evidence, p 137.

¹⁷⁷ Transcript of evidence, p 265.

¹⁷⁸ Transcript of evidence, p 334.

¹⁷⁹ Transcript of evidence, p 336.

¹⁸⁰ Transcript of evidence, p 335.

¹⁸¹ Transcript of evidence, p 216.

133. Counsel for the Family submitted that the failure to separate and isolate the officers involved immediately following the fatal incident and after an express direction from Snr Sgt Bowen, was not in accordance with Victoria Police policies and guidelines.
134. Counsel for the Chief Commissioner of Police submitted that the members' recollections differed, and their evidence contained some inconsistencies, but those matters only serve to highlight the extent to which each police officer gave their account to the best of their recollection, and which demonstrates it was uncontaminated to any significant extent.¹⁸²

Prevention opportunities

135. The Coroners Court has a mandate to consider potential prevention opportunities. In this case, Counsel Assisting submitted that the absence of Mildura 850 having an in-car video (ICV) system has constrained my ability to make precise findings. It was submitted the benefits of ICV are akin to that of BWC; it facilitates evidence being captured objectively, it significantly increases transparency in relation to the conduct of Victoria Police members and interactions with members of the public and it assists in capturing and recording the precise occurrence of events from an evidential perspective.¹⁸³ Counsel Assisting suggested a potential recommendation about the Chief Commissioner of Police seeking funding to implement the installation of ICV in all police vehicles. Counsel for the Family agreed with this proposed recommendation.¹⁸⁴
136. Counsel for the Chief Commissioner of Police did not object to the proposition but suggested that it comes down to a question of funding.¹⁸⁵ It was submitted that the Chief Commissioner of Police has fitted out 221 Highway Patrol Vehicles with ICV which was completed in December 2021.¹⁸⁶ Further, Victoria Police have approximately 2,200 fleet vehicles. To fit out the whole fleet with ICV has been estimated to cost in excess of \$22 million.¹⁸⁷
137. For the purpose of clarity I understand that the technology currently fitted out in Highway Patrol Vehicles includes *both* automatic number plate recognition *and* in-car video recording technology (collectively referred to as an in-car video (ICV) system). This is entirely understandable given the primary focus of Highway Patrol relates to traffic enforcement activities. For present purposes however, what is required is in-car video

¹⁸² Submissions of the Chief Commissioner of Police dated 1 May 2023, p 1.

¹⁸³ Finals Submissions of Counsel Assisting dated 1 May 2023, p 2.

¹⁸⁴ Submissions of the family dated 1 May 2023, p 10.

¹⁸⁵ Transcript of Submissions Hearing dated 8 May 2023, p 58.

¹⁸⁶ Transcript of Submissions Hearing dated 8 May 2023, p 58.

¹⁸⁷ Transcript of Submissions Hearing dated 8 May 2023, p 59.

technology (absent automatic number plate recognition) that allows an operational Victoria Police vehicle to record audio and video footage of road policing activities, including roadside intercepts, including associated metadata such as vehicle speed, GPS location and other relevant matters. This has the potential to alleviate some of the cost pressures identified by the Chief Commissioner above.

138. Having considered these issues, I have made a relevant recommendation.
139. It was further suggested by Counsel for the Family that Victoria Police provide training to members that highlight the VPM Death or Serious Injury/Illness, in particular the importance of isolating all members involved.¹⁸⁸ Counsel for the Chief Commissioner of Police submitted at the submissions hearing on 8 May 2023, that this was outside the scope of the inquest and no evidence was called about training of acting sergeants, therefore no recommendation should be made in this respect. I agree.

FINDINGS AND COMMENT

140. Having investigated the death of Phillip John Pierson, I make the following findings and conclusions, pursuant to section 67(1) of the *Coroners Act 2008*:
- a. that the identity of the deceased was Phillip John Pierson, born 3 July 1973; and
 - b. that Phillip John Pierson died on 21 March 2020, at the corner of Plantation Street and Alicia Court, Mildura, from 1(a) multiple injuries sustained in a motorcycle incident;
 - c. in the circumstances set out above.
141. I find on the day of the incident Phillip was unlicensed, riding an unregistered motorcycle, and was under the influence of illicit substances, primarily methylamphetamine and cannabis. He also had a long criminal history of driving related matters. I consider these actions have had an impact on his ability to ride safely and have regrettably contributed to his passing.
142. I find that the motorcycle came to the attention of all three members of Mildura 850 at some stage around 7.25pm when they were entering or within the median cutaway adjacent to Aldinga Drive. The motorcycle ridden by Phillip came to their attention because it initially appeared to have no rear registration plate which was the reason to follow it. I accept the evidence of the members of Mildura 850 that they did not know the identity of

the rider, nor had they had any prior dealings with the bike, save for the fact that LSC Lee had seen the motorcycle earlier in the night at an acquaintance of Phillip's.

143. I find that Mildura 850 made a silent approach and engaged in urgent duty driving in an attempt to obtain a registration number which was reasonable and appropriate in the circumstances and in accordance with the VPM Urgent Duty Driving policy. No warning devices were activated in closing the distance with the motorcycle. Mildura 850 caught up to the motorcycle at the cutaway at Plantation Street. I find that Mildura 850 travelled moderately faster than the surrounding traffic, motorcycle and the speed limit. I further find that SC Ayson and Sgt Oriel conducted appropriate risk assessments.
144. I find that SC Ayson activated the internal dashboard lights on his vehicle as he was crossing over Deakin Avenue after leaving the median cutaway but prior to entering Plantation Street. The purpose of the activation was to give Phillip a direction to stop, that is, that they intended to attempt an intercept at around the same time Phillip negotiated the spoon drain and speed hump at the entry to Plantation Street, and then accelerated away. I find that these events happened in an extremely short space of time and that in the absence of objective evidence (such as front facing dashcam), I am unable to make a finding in respect of their precise sequence. After Phillip accelerated away, SC Ayson followed and continued driving down Plantation Street at or below the speed limit, with the vehicle lights (but not siren) activated, for approximately 140 metres before negotiating a left bend and coming across the accident. The entire incident from the time police entered Plantation Street to the corner near Alicia Court occurred within mere seconds.
145. I find the conduct of Mildura 850 to activate the warning lights and attempt an intercept was reasonable and appropriate in the circumstances.
146. I am not satisfied there is clear or cogent evidence to make a finding that Phillip was aware of police presence. Therefore, I am unable to determine on the available evidence Phillip was aware of the activation of the police lights and the direction to stop.
147. The evidence reveals that SC Ayson and Sgt Oriel both believe there was no pursuit. I accept whilst SC Ayson may not have been able to adequately articulate his reasons, his intention was never to pursue the motorcycle. This finding is supported by the fact that as he continued to drive along Plantation Street after Phillip took off, he drove at or below the speed limit, he didn't activate the siren, and he didn't call a pursuit over Police Communications. His conduct was entirely inconsistent with that of a Police member

¹⁸⁸ Submissions of the family dated 1 May 2023, p 10.

engaging in a pursuit. His reason for continuing down Plantation Street was because in his mind, and given his local knowledge, he was concerned about what risks lay beyond the sharp bend in the road including the chicanes in the road, the fact that it was a highly populated area, and the rider was travelling at speed.

148. Further, ambiguity surrounds the issue of whether Phillip was aware of police presence and the direction to stop, which is an aspect of the Pursuits Policy that is required to initiate a pursuit. Mildura 850 was in an unmarked police car, and the evidence clearly establishes that the dash-mounted lights can be difficult to see in daylight and I have not been able to determine Phillip was aware of the presence of police. It is apparent to me that the circumstances of this incident, fall outside the usual circumstances of a pursuit, when a driver is aware of police presence, and police activate lights and sirens, call the pursuit on the police communications, and follow at speed.
149. This unfortunate incident occurred within seconds whilst the Police members were still engaged in assessing Phillip's conduct in the context of an attempted intercept, and the framework provided by the Pursuits Policy. I find, as articulated in evidence by Sgt Oriel, that there existed significant uncertainty as to whether the direction to stop had been received and understood, and further it was reasonable *not* to conclude that Phillip was taking deliberate action to avoid being stopped. As stated previously, the fact that the conduct now being examined occurred within mere seconds must factor into the reasonableness of the conclusions made by the Police members.
150. Having considered all of the evidence, and on the balance of probabilities, I find there was no pursuit initiated in this incident.
151. I find that Sgt Jepson as forward commander should have appreciated this was a critical incident in accordance with the VPM Death or Serious Injury/Illness Incidents involving police and should have separated and isolated the members of Mildura 850 once he arrived at the scene. I accept that he was an Acting Sergeant and this incident was his first time as a forward commander and he hadn't undertaken any sergeant training at the time. I found that he has since reflected upon the events of the night and his honesty and candour is to be admired. I also accept he has since undertaken sergeant training and will be better equipped in the future to manage a critical incident should it occur.
152. Ultimately, I find the police members acted in good faith and with the best intentions in the circumstances.

153. I convey my sincerest sympathy to Phillip's family, particularly his loving wife, Donna and their three children and his mother and step-sisters. It is apparent to me that Phillip's death has had a devastating impact on the family.

COMMENTS

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

155. The absence of an in-car video (ICV) system or front-facing dashcam made these circumstances difficult to determine. The introduction of BWC footage has made my job much easier. The benefits of ICV are akin to that of BWC. It captures objective evidence, it significantly increases the transparency in relation to the conduct of Victoria Police members and interactions with members of the public, and it ultimately assists in capturing and recording from an evidential perspective precisely the occurrence of events.

RECOMMENDATIONS

156. Pursuant to section 72(2) of the Coroners Act, I make the following recommendations connected with the death.

To the Chief Commissioner of Victoria Police:

I recommend that the Chief Commissioner of Police give priority to seeking funding to implement the installation of in-car video technology (also referred to as front facing dashcam) in all police vehicles that undertake operational policing duties, along with the associated infrastructure to manage and review the footage. For the purposes of clarity, this technology should record audio and video footage of road policing activities, including roadside intercepts, and relevant metadata from the Police vehicle (speed, GPS location etc). Automatic number plate recognition (as installed across Victoria Police's highway patrol fleet) is *not* a requirement of this technology.

157. Pursuant to section 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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

Donna Pierson;

Jenine Preece;

Chief Commissioner of Police;

Coroner's Investigator, A/D/Sgt Leigh Miller, MCIU; and

Professional Standards Command, Victoria Police.

Signature:



JACQUI HAWKINS
DEPUTY STATE CORONER
Date: 18 August 2023