

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2014 4554

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of Rutiano Chong Gum**

Delivered On:	8 October 2015
Delivered At:	65 Kavanagh Street Southbank, Victoria, 3006
Hearing Dates:	20 and 21 July 2015
Findings of:	Coroner Jacqui Hawkins
Representation:	Mr B Ihle of counsel for the Chief Commissioner of Police
Counsel Assisting the Coroner	Ms S Gebert, Principal In House Solicitor, Coroners Court of Victoria

I, Jacqui Hawkins, Coroner having investigated the death of Rutiano Chong Gum

AND having held an inquest in relation to this death on 20 and 21 July 2015  
at Melbourne

find that the identity of the deceased was Rutiano Chong Gum

born on 31 May 1993

and the death occurred 5 September 2014

at corner of Sussex Street and Leslie Avenue, Coburg North, Victoria, 3058

**from:**

1 (a) HEAD AND NECK INJURIES IN A MOTOR VEHICLE COLLISION (DRIVER)

**in the following circumstances**

1. Rutiano Chong Gum, also known as Sano, died on 5 September 2014, in a motor vehicle collision which occurred while he was being pursued by members of Victoria Police. He was 21 years old and lived in Fitzroy with his family, including his mother, brother and two sisters.
2. Sano worked in a chemical factory on a casual basis three or four days a week and had commenced training to become a baggage handler at the Melbourne Airport.
3. Sano held a Probationary Licence and had purchased and registered a white 1994 Ford Falcon XR6 station wagon (station wagon) in June 2014.

#### **SURROUNDING CIRCUMSTANCES**

4. On 5 September 2014, Sano was driving his station wagon in Coburg North. At approximately 8.18pm, First Constable Nicholas Barnes was driving a marked police Holden Commodore station wagon (call sign Operations 515), along Sydney Road, Brunswick. Constable Johnny Lombardi, who was the designated observer, noticed Sano's station wagon displaying the registration XMP-564, with the front number plate hanging as if it was affixed with one screw. Constable Lombardi checked the registration on the Law Enforcement Assistance Program (LEAP) which revealed that the registration was assigned to a black 2010 Subaru Impreza Sedan. At the time, there had been no report the number plates had been stolen.
5. Constable Lombardi formed the view that the plates were either stolen or being used to avoid traffic infringements. First Constable Barnes performed a 'u-turn' to double check the

registration plates. As First Constable Barnes held a restricted silver licence<sup>1</sup>, Constable Lombardi notified D24 and requested assistance to intercept the vehicle.

6. The station wagon continued to flow with traffic and Sano was noted to be driving in a 'normal manner' and obeying traffic signals.
7. A second marked police Holden divisional van, driven by Constable Samuel Gales with First Constable Alexander Austin as the observer, (call sign Fawkner 303), responded to the call for assistance. Just north of the intersection with O'Hea Street, Coburg North, they moved behind Sano's station wagon and performed a box type manoeuvre in an attempt to intercept Sano, but he failed to stop. Sano was still driving normally and made no unusual manoeuvres.
8. Fawkner 303 was not an ideal vehicle to be involved in a pursuit and a more suitable vehicle Fawkner 614 was requested but could not be contacted until later.
9. Constable Gales activated his lights and sirens in a further attempt to intercept the station wagon. At about 8.26pm, Sano turned left into Gaffney Street and First Constable Austin indicated via D24 communications (D24) that "*this is going to be a pursuit*". Sirens can be heard in the background of the D24 recording.
10. Sergeant Adrian Kelly, who had been remotely monitoring the attempted interception before the pursuit commenced, advised D24 that he would act as the Pursuit Controller.
11. The pursuit progressed in a loop:
  - West along Gaffney Street;
  - Left onto Sussex Street;
  - Left onto O'Hea Street;
  - Left onto Stock Street;
  - Right onto Cope Street;
  - Left onto Gaffney Street; and then
  - Right onto Sussex Street.
12. First Constable Austin stated that he was giving updates to D24 as regularly as he could and that Sano was travelling in a controlled manner. However, by the time they reached Cope Street it appeared that Sano had started to accelerate away from them.
13. When they reached the roundabout at Gaffney Street and Sussex Street for the second time, Sano drove around it the wrong way, then corrected himself and resumed travelling on the correct side of the road. First Constable Austin stated that as they approached the road he

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<sup>1</sup> Victoria Police members who hold a restricted silver class approved licence are approved to drive a silver classified police vehicle on urgent duty up to 25km/ph above the posted speed limit, but must not engage in a pursuit. Exhibit 11 – Statement of Senior Sergeant Allen dated 9 December 2014, Inquest brief, p208.

asked Constable Gales, “*do we terminate?*”, to which Constable Gales responded that Sano had slowed down and that there were no other vehicles around so he considered it safe to continue.

14. First Constable Austin stated this was not communicated over D24 as he was unable to get air time on the radio. When Fawkner 303 resumed observations of Sano’s station wagon on Sussex Street, they observed two vehicles travelling in front of Sano. They witnessed Sano attempt to overtake the vehicles on the right hand side of the road and at the same time a yellow coloured Toyota Hiace van, a registered taxi, attempted a right hand turn into Leslie Avenue. Sano collided into the middle of the right hand side of the taxi.
15. The collision occurred at 8:30pm, four minutes after the commencement of the pursuit.
16. The approximate distance from where the pursuit was declared, to the location of the collision, was approximately 4.95 km.
17. Sano died instantly as a result of the injuries he sustained in the collision.

#### **CORONIAL INVESTIGATION**

18. The Victoria Police, Major Collision Investigation Unit (MCIU) immediately attended the scene and commenced a coronial investigation into Sano’s death. Detective Sergeant Hill was appointed as the Coroner’s Investigator.
19. As Sano’s death occurred during a police pursuit, Professional Standards Command attended the scene in an oversight capacity. The police members involved were separated, taken to the police station, drug and alcohol tested and made statements about the events of the night.
20. The collision was recorded on a CCTV camera that was affixed to a nearby panel-beating warehouse. The footage captured the moment Sano’s station wagon hit the taxi and narrowly missed a pedestrian who was crossing Leslie Avenue seconds before the collision.
21. At the time of the collision, the taxi was not carrying any passengers. The driver was taken to hospital by ambulance and was released with no reported injuries.
22. Sussex Street, at the incident location, is a two way undivided carriageway, in a north/south orientation. No centre dividing or fog lines are painted on the road surface. The road was constructed of bitumen and was in good condition. Adjacent to the road was residential housing, industrial warehouses and vacant lots.
23. Leslie Avenue is a two way undivided carriageway, oriented generally east/west. There are no centre dividing or fog lines painted on the road surface. Leslie Avenue terminates at Sussex Street with a “T” intersection. At the intersection, Leslie Avenue has broken white lines

leading to a solid single white line along the centre of the roadway. Vehicles travelling on Leslie Avenue are controlled by a give way sign.

24. The applicable speed limit on both Sussex Street and Leslie Avenue is 50kph.
25. Detective Sergeant Hill reported that on the night of the incident, the roads were dry, the weather was fine, it was cool but not cold and the visibility was good.
26. The speed of Fawkner 303 was investigated. The police vehicle had a Garmin Global Positioning System (GPS) installed however the evidence is that these units in police vehicles are known to have a level of inaccuracy and therefore the speeds recorded cannot be relied upon.<sup>2</sup>
27. Detective Acting Sergeant Dr Jenelle Mehegan, a collision reconstruction expert, attended and examined the incident location. She inspected the environment of the scene, the scene evidence and the physical evidence including tyre marks, gouges, scratches, scrapes and the damage to both vehicles. Having considered all of the physical evidence, Detective Mehegan was able to determine that the approximate speed of the station wagon at the time of the collision was between 89.1km/h and 105.9km/h. Due to the speed, both vehicles slid and rotated at the point of impact.<sup>3</sup>
28. Senior Constable Junny Hetheron of the Mechanical Investigation Unit, conducted a mechanical inspection on the station wagon and the taxi and reported that the inspection did not reveal any mechanical fault on either vehicle which would have caused or contributed to the collision.<sup>4</sup>
29. The Victoria Police investigation revealed that the registration plates XMP 564 fitted to the station wagon were stolen earlier in the day from a black Subaru Impreza parked in a car park off Church Street, Fitzroy North. This was a short distance from Sano's home. At approximately 7.50pm, Sano's station wagon was involved in the theft of petrol to the value of \$86 from the Liberty Service Station in Fitzroy.

## **THE PURPOSE OF A CORONIAL INVESTIGATION**

30. The Coroners Court of Victoria is an inquisitorial jurisdiction.<sup>5</sup> 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 death

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<sup>2</sup> Statement of Leading Senior Constable Carsten Schultz dated 10 December 2014, Inquest brief, p205.

<sup>3</sup> Report on Collision provided by Detective Acting Sergeant Dr Jenelle Mehegan dated 12 March 2015, Inquest brief, p163.

<sup>4</sup> Mechanical Investigation Report prepared by Senior Constable Junny Hetheron, Inquest brief, p199.

<sup>5</sup> Section 89(4) *Coroners Act 2008* (Vic).

occurred.<sup>6</sup> The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances to the death, but is confined to those circumstances sufficiently proximate and causally relevant to the death and not merely all circumstances which might form part of a narrative culminating in death.<sup>7</sup>

31. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, the promotion of public health and safety, and the administration of justice.
32. It is not the role of the coroner to lay or apportion blame, but to establish the facts.<sup>8</sup> It is not the coroner's role to determine criminal or civil liability arising from the death under investigation or to determine disciplinary matters.
33. A coroner may comment on any matter connected with the death, may report to the Attorney-General and may make recommendations to any Minister, public statutory authority or entity, on any matter connected with the death, including recommendations relating to public health and safety and the administration of justice.<sup>9</sup>
34. This finding draws on the totality of the material produced as part of the coronial investigation into Sano's death, including the coronial brief, statements, reports and testimony of witnesses who gave evidence at the Inquest and any exhibits tendered through them. In writing this finding I do not purport to summarise all of the evidence but refer to it only in such detail as appears warranted by its forensic significance.

## **POST MORTEM EXAMINATION AND REPORT**

35. On 8 September 2014, Dr Joanna Glengarry, Forensic Pathologist at the Victorian Institute of Forensic Medicine performed an external examination on the body of Sano and provided an opinion that the cause of death was 1a) HEAD AND NECK INJURIES SUSTAINED IN A MOTOR VEHICLE COLLISION (DRIVER).<sup>10</sup>
36. Toxicological analysis revealed a blood alcohol concentration of 0.14g/100mL. Probationary drivers are prohibited from having any alcohol in their blood. A blood alcohol content in

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<sup>6</sup> Section 67(1) *Coroners Act 2008* (Vic).

<sup>7</sup> *Harmsworth v The State Coroner* [1989] VR 989, *Clancy v West* (unreported 17/08/1994, Supreme Court of Victoria, Harper J).

<sup>8</sup> *Keown v Kahn* (1999) 1 VR 69.

<sup>9</sup> Section 72(1) and (2) *Coroners Act 2008* (Vic).

<sup>10</sup> Medical Examination Report dated 5 October 2014, Inquest brief, p53.

excess of 0.15g/100mL can cause considerable depression of the central nervous system affecting cognition and is capable of producing adverse behavioural changes.

## **CORONIAL INQUEST**

37. The *Coroners Act 2008 (Vic)* (Coroners Act) requires that I must hold an inquest into a reportable death if the death or cause of death occurred in Victoria and if immediately before death, a person was placed in custody or care. The definition of custody and care includes a person who a police officer is attempting to take into custody.<sup>11</sup> Sano's death occurred while police were attempting to take him into custody and an Inquest was therefore required.
38. Sano's death was subject to a thorough coronial investigation in which extensive further material was requested from and provided by the Chief Commissioner of Victoria Police.
39. Two directions hearings were held on 29 September 2014 and 29 April 2015 to assist me to define the direction and scope of my investigation.
40. An Inquest into the death of Sano was held in Melbourne on 20 and 21 July 2015.

## **Witnesses**

41. The following witnesses gave *viva voce* evidence at the Inquest.
  - First Constable Alexander Austin, Fawkner 303, Victoria Police;<sup>12</sup>
  - Constable Samuel Gales, Fawkner 303, Victoria Police;<sup>13</sup>
  - Sergeant Adrian Kelly, Victoria Police;<sup>14</sup> and
  - Senior Sergeant Stephen Allen, Victoria Police.

## **Submissions**

42. At the conclusion of the evidence written submissions were provided by the Chief Commissioner of Victoria Police on 28 August 2015.

## **Issues investigated at Inquest**

43. At the commencement of the Inquest, it was evident that most of the facts surrounding Sano's death were known and without dispute, including his identity, the medical cause of his death and aspects of the circumstances of his death, including the place of his death.
44. Issues identified that required further exploration at Inquest included:
  - The conduct of the pursuit;

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<sup>11</sup> Section 3 definition of *person placed in custody or care* (j) *Coroners Act 2008 (Vic)*.

<sup>12</sup> First Constable Austin was granted a certificate pursuant to section 57(1)(b) *Coroners Act 2008 (Vic)*, which enabled him to give evidence without that evidence being used in any proceeding against him.

<sup>13</sup> Constable Gales was granted a certificate pursuant to section 57(1)(b) *Coroners Act 2008 (Vic)*, which enabled him to give evidence without that evidence being used in any proceeding against him.

<sup>14</sup> Sergeant Kelly was granted a certificate pursuant to section 57(1)(b) *Coroners Act 2008 (Vic)*, which enabled him to give evidence without that evidence being used in any proceeding against him.

- Training of Victoria Police Members; and the
- New Victoria Police Pursuit Policy.

## THE CONDUCT OF THE PURSUIT

### Victoria Police Pursuit policies and procedures in place on 5 September 2014

45. The Victoria Police Manual (VPM) comprises many policies, procedures and guidelines outlining how certain situations should be managed and acted upon by Victoria Police members. The VPM has policies and procedures in relation to pursuits and urgent driving. Policy Rules are mandatory and must be complied with. Non compliance can result in management or disciplinary action taken against members. Procedures and guidelines are provided to support the interpretation and application of the Policy Rules and responsibilities of police members. They include recommended good practices and assessment tools to assist members to make lawful, ethical and professional decisions.
46. There are inherent risks associated with pursuits and members are instructed to always be mindful of “safety first” principles. The Pursuit Policy Rules has the following overarching instruction:
- A police member’s duty to protect life and property will always have primacy over the need to arrest offenders, especially when the offence involved is relatively minor, or where there are safe options other than immediate arrest.*<sup>15</sup>
47. A pursuit exists when police begin to follow a driver of a vehicle because the driver:
- fails to stop after being signalled to stop by a police member; and/or
  - is taking deliberate action to avoid being stopped.<sup>16</sup>
48. Before any pursuit commences, police members must consider these policy rules, procedures and guidelines, their training, experience and understanding of the situation and circumstances which they face. According to the Pursuit Policy Rules, a decision to pursue a vehicle must be proportionate to the harm members are seeking to prevent, bearing in mind:
- the reasons for initiating a pursuit;
  - the risks involved in engaging in the pursuit; and
  - the likelihood of the pursued vehicle stopping safely and as soon as possible at the direction of police.<sup>17</sup>
49. First Constable Austin and Constable Gales both gave evidence that they were aware of the Pursuit Policy Rules and Procedures in place at the time and were able to demonstrate knowledge about their practical application.

<sup>15</sup> Exhibit 2 - VPM – Policy Rules: Pursuits, Inquest brief p286.

<sup>16</sup> Exhibit 2 - VPM – Policy Rules: Pursuits, Inquest brief p286.

<sup>17</sup> Exhibit 2 - VPM – Policy Rules: Pursuits, Inquest brief p287.



### Decision to initiate the pursuit

50. At the time First Constable Austin and Constable Gales first attempted to intercept Sano, they were aware that the number plate was not properly affixed to the vehicle, the registration did not match the description of the vehicle and there was one male driver on board. This led the First Constable Austin and Constable Gales to believe that the number plates were either stolen or put on the vehicle to avoid traffic infringements and that the driver was deliberately trying to conceal his identity.
51. According to First Constable Austin, the initial objective was “*to intercept him and make those enquiries and deal with the offences regarding the number plates*”.<sup>18</sup> Fawkner 303 consequently activated their lights and sirens in an attempt to achieve this end. At this point, Constable Gales did not consider himself to be in pursuit because there was no display of driving to indicate that Sano intended to drive off, other than he was not pulling over.<sup>19</sup> Constable Gales commented that at that early stage he “*assessed the risk of [Sano] fleeing to be pretty low*”.<sup>20</sup>
52. Once Sano made the decision to evade police, First Constable Austin’s suspicion grew and he believed Sano may have been hiding something. He considered potential offences Sano may have committed and stated at Inquest that:
- in my experience as a police officer, a person will only fit number plates to a car for the purpose of hiding their identity so that they can commit further and more serious offences.*<sup>21</sup>
53. Constable Gales was of the opinion that Sano’s decision to evade police may have been related to a recent spate of motor vehicle theft in the area. First Constable Austin agreed and stated that “*at the time in the area we were having a lot of trouble with stolen motor vehicles*”.<sup>22</sup>
54. Constable Gales stated that based on the information they had and the nature of the job, he knew there was a risk of the driver fleeing. He reported that he had been involved in about four previous pursuits, as either driver or observer, involving stolen vehicles or drivers refusing to pull over.<sup>23</sup>
55. Ultimately, First Constable Austin and Constable Gales considered they were justified in their decision to initiate the pursuit.

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<sup>18</sup> Transcript of evidence, p61.

<sup>19</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p114.

<sup>20</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p113.

<sup>21</sup> Transcript of evidence, p62.

<sup>22</sup> Transcript of evidence, p61.

<sup>23</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p112.

## Risk Assessment of the pursuit

56. Both police members gave evidence about the importance of conducting a risk assessment in relation to whether to initiate a pursuit and then conducting a continual risk assessment throughout the pursuit. They reported they must have safety principles in the forefront of their minds. They both described the ongoing risk assessment as a balancing exercise.

57. Prior to the commencement of any pursuit, First Constable Austin stated that he would first assess what is known at the time<sup>24</sup> and then constantly re-assess. He commented that “*the risk assessment is ongoing, so it’s from beginning to end and the risk assessment can change at any time*”.<sup>25</sup> He further explained that a risk assessment “*changes with every set of circumstances, every street, every time you see a vehicle, every road sign [and] every speed*”.<sup>26</sup>

58. The risk assessment involved assessing the environmental conditions and speed of the vehicle. First Constable Austin summarised the environmental conditions that night as:

*the weather was good, it was dry and the roads were dry. The area [was] lit by streetlights giving... visibility. There was minimal traffic on the roads throughout the pursuit.*<sup>27</sup>

59. Constable Gales considered that apart from Sano’s speeding, his driving was controlled and calculated. He was of the view that his driving was such that there were no other risk factors, other than speed, that would increase his risk of crashing.<sup>28</sup> The ongoing risk assessments were an important part of Constable Gales’ decision to continue to pursue Sano. He stated:

*During the pursuit, I was constantly assessing the risks to the public, us or the driver and deemed the risk of injury or collision to be low. The driver was speeding but his driving was controlled and deliberate. He slowed for corners and turns and the only time I felt that the risk of crashing increased was when he cut the corner at the roundabout prior to the collision. This was the only time his driving escalated, however there were no other motorists in the area put at risk.*<sup>29</sup>

60. Further, Constable Gales stated:

*Whilst driving in Gaffney Street apart from the speed, his driving was controlled, his lights were on, traffic was light with vehicles that were travelling in our direction pulling over to let us through. As we were driving, I didn’t think his driving was a significant risk to other road users.*<sup>30</sup>

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<sup>24</sup> Transcript of evidence, p34.

<sup>25</sup> Transcript of evidence, p47.

<sup>26</sup> Transcript of evidence, p91.

<sup>27</sup> Exhibit 1 – Statement of First Constable Alexander Austin dated 6 September 2014, Inquest brief, p107.

<sup>28</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p115.

<sup>29</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p119.

<sup>30</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p114.

61. Senior Sergeant Parker, the designated Pursuit Coordinator (who sits above the Pursuit Controller during a pursuit) stated:

*It is my view that although pursuits do carry with them an element of risk no matter what the circumstances, the risk in this case was low throughout. No one would have foreseen the tragic outcome that unfolded that occurred when the deceased's vehicle sped away from pursuing police at the intersection of Gaffney and Sussex Street.*<sup>31</sup>

62. First Constable Austin and Constable Gales considered the pursuit to be an acceptable risk.

### **The Pursuit**

63. Constable Gales stated there was no discussion in the vehicle about whether there was going to be a pursuit. According to Constable Gales, First Constable Austin made the call and advised D24 that they were in pursuit. Constable Gales stated he was happy with this decision<sup>32</sup> which First Constable Austin made because he felt the intercept was going on longer than necessary and in his mind they were in pursuit.
64. At Inquest, it was clear that First Constable Austin and Constable Gales understood the complex reasoning and decision-making involved with the decision to initiate the pursuit and to conduct ongoing risk assessments.
65. Throughout the pursuit, Constable Gales believed that *“the driving of the Ford was regular and nothing was erratic...He maintained a constant speed and [showed] no signs that he was going to flee”*.<sup>33</sup>
66. First Constable Austin stated that during the pursuit, he was trying to relay their speed to D24 but due to the configuration of the dashboard on the Holden vehicle, he could not see the speedometer. He therefore relied on what Constable Gales conveyed to him. First Constable Austin estimated that their top speed during the pursuit would have been around 90kph.
67. When Sano drove around the roundabout the wrong way, First Constable Austin and Constable Gales considered whether they should terminate the pursuit. Constable Gales stated that *“although the turn was illegal, it didn't pose a risk to any member of the public at the time”*<sup>34</sup> and further that *“I assessed what he did to be of low risk to the public”*.<sup>35</sup> He reasoned there was vacant land in the area, visibility was excellent, he could see for some distance and assumed Sano could also.<sup>36</sup>

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<sup>31</sup> Exhibit 12 – Remainder of Inquest brief, Statement of Senior Sergeant Glenn Parker dated 14 October 2014, Inquest brief, p150.

<sup>32</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p114.

<sup>33</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p114.

<sup>34</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p117.

<sup>35</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p115.

<sup>36</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p115.

68. Constable Gales stated that when Sano sped off:

*[I]t was at this point that I started to feel uncomfortable with the speed we were driving at and that the distance between the Ford and us was becoming too great to maintain proper observation of it, I was about to inform First Constable Austin that I was going to terminate the pursuit.<sup>37</sup>*

69. At Inquest, Sergeant Kelly commented that during a pursuit:

*you're very reliant on your faith and trust that you have in the observer who is calling this pursuit and obviously the information that you're gleaning from, the information that they're providing you.<sup>38</sup>*

70. Sergeant Kelly made notes immediately after the incident and reflected on his thoughts of First Constable Austin as an observer and he recorded that “Austin is a clear thinking member. I trust his calls”.<sup>39</sup> At Inquest, he described First Constable Austin as “the most mature 25 year old I've ever met”.<sup>40</sup> This evidence supported my view that First Constable Austin was an impressive witness.

71. First Constable Austin gave evidence he felt Constable Gales' driving was appropriate and that the outcome of the pursuit was devastating.<sup>41</sup>

### **Pursuit Controller**

72. To control and monitor the pursuit, the Pursuit Policy Rules requires a Pursuit Controller to come up on air and nominate themselves to perform this role. Sergeant Kelly nominated to monitor the pursuit; at the time it was his belief that the most likely outcome would be that the vehicle would pull over.<sup>42</sup>

73. When First Constable Austin advised D24 they were in pursuit, Sergeant Kelly requested Fawkner 303 give their vehicle speed, the driving manner of the vehicle they were pursuing and the status of the surrounding traffic. Sergeant Kelly stated “I then began to commence a risk assessment in my mind, I was aware the D24 operator would be calling the airwing and the canine unit as per policy”.<sup>43</sup> His initial thoughts were that the pursuit was occurring slowly.<sup>44</sup>

74. Sergeant Kelly gave evidence that while he was monitoring the pursuit he was trying to think of ways to minimise risk and avoid the pursuit. He formulated a plan which included instructing all ground units to break off the pursuit once the airwing was overhead and

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<sup>37</sup> Exhibit 8 – Statement of Constable Samuel Gales dated 6 September 2014, Inquest brief, p117.

<sup>38</sup> Transcript of evidence, p169.

<sup>39</sup> Exhibit 10, Notes written by Sergeant Kelly, Inquest brief, p 407.

<sup>40</sup> Transcript of evidence, p194.

<sup>41</sup> Transcript of evidence, p96.

<sup>42</sup> Exhibit 9, Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p128.

<sup>43</sup> Exhibit 9, Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p129.

<sup>44</sup> Exhibit 9, Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p129.

allowing the airwing to maintain aerial observations and utilise the canine unit once the vehicle stopped.<sup>45</sup>

75. Sergeant Kelly stated that he tried to transmit a request for Fawkner 614 to take over as primary unit, however there was an engaged tone on the radio due to other units transmitting information.<sup>46</sup> From the information that was conveyed by Fawkner 303, he believed that Sano was driving well, that the speeds ranged between 50-60kph and Sano was not reckless.<sup>47</sup>
76. First Constable Austin stated that the pursuit controller turned his attention to the speed and direction of the vehicle. He explained Sergeant Kelly's questions kept him focussed and enabled him to convey information that was important to make his assessments. First Constable Austin commented that it was good to have an independent person who was not in the vehicle in the heat of the situation.<sup>48</sup>
77. Once Fawkner 303 had turned into Sussex Street and communicated that the speeds were between 80-90kph, Sergeant Kelly, aware the speed limit in that area was 60kph, believed this was the first time the pursuit was approaching excessive speeds. Almost immediately Sergeant Kelly heard that an accident had been called over the radio which surprised him because until that point:

*there had been no mention of excessive speed or taking intersections recklessly, all indications had been that the offending driver had been slowing down to negotiate intersections and hazards.*<sup>49</sup>

78. Sergeant Kelly stated that "*the radio transmissions of Fawkner 303 had been calm, precise and gave no indication of anything untoward about to occur*".<sup>50</sup>
79. Senior Sergeant Glenn Parker stated that:

*It was apparent that Sergeant Kelly had control of the pursuit and was applying a constant risk assessment to the pursuit as it continued. His communications were actively involved in the pursuit itself and forethought around resolution strategies by utilising available resources.*<sup>51</sup>

### **Police communications during the pursuit**

80. Communications during a pursuit are critical. The Pursuit Procedures suggest that to support clear and constant communication during a pursuit, the driver or observer should relay reasons

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<sup>45</sup> Exhibit 9, Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p129.

<sup>46</sup> Exhibit 9, Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p129.

<sup>47</sup> Exhibit 9, Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p130.

<sup>48</sup> Transcript of evidence, p95.

<sup>49</sup> Exhibit 9, Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p130.

<sup>50</sup> Exhibit 9, Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p130.

<sup>51</sup> Exhibit 12 – Remainder of Inquest brief, Statement of Senior Sergeant Glenn Parker dated 14 October 2014, Inquest brief, p145.

for the pursuit, speed, direction, environmental conditions, vehicle descriptions and any other relevant information.<sup>52</sup>

81. It appears that due to the large number of police units trying to transmit communications during the pursuit, some members had difficulty. Senior Sergeant Stephen Allen, the Officer in Charge of Driver Training reported, “*communication during a pursuit is critical as other police monitoring the progress are making decisions on information they are receiving*”.<sup>53</sup>
82. First Constable Austin believed that he called the pursuit to the best of his ability whilst trying to monitor the directions of travel, speed, radio communications and observations of the vehicle.<sup>54</sup> When Sano drove on the wrong side of the roundabout at Sussex Street, First Constable Austin tried to relay this information but was unable to:

*I did try and get up on the radio...because I wanted to, one, relay the coordination of the pursuit to a north-bound direction on Sussex Street, and secondly, I wanted to convey that...he had made that move.*<sup>55</sup>

83. When asked if he was concerned about being unable to transmit on the radio, First Constable Austin responded that he was. However he felt throughout the pursuit when he could not transmit it was because essential information was being broadcast on the radio. First Constable Austin considered his communications to have been effective.<sup>56</sup>
84. Sergeant Kelly also reported difficulty transmitting:

*I tried to come up on the radio to request an ETA (estimated time of arrival) of the Fawkner 614 unit to take over as primary pursuit vehicle, however, I was getting the engaged tone on the radio due to other units transmitting.*<sup>57</sup>

85. Senior Sergeant Parker agreed and stated the radio was extremely busy and he was also not able to transmit.<sup>58</sup> He had the ability to use the “priority button” on his police radio which allows him to override the radio conversations, if necessary,<sup>59</sup> however he did not during this pursuit.
86. Counsel for Victoria Police submitted that there should be no criticism of the members for their use of the radio and the information that was conveyed was adequate and effective.<sup>60</sup>

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<sup>52</sup> Exhibit 3 – VPM – Procedures and Guidelines – Pursuits, Inquest brief, p299.

<sup>53</sup> Exhibit 11 – Statement of Senior Sergeant Allen dated 9 December 2014, Inquest brief, p210.

<sup>54</sup> Exhibit 1 – Statement of First Constable Alexander Austin dated 6 September 2014, Inquest brief, p107.

<sup>55</sup> Transcript of evidence, p83.

<sup>56</sup> Transcript of evidence, p94 - 95.

<sup>57</sup> Exhibit 9 - Statement of Sergeant Adrian Kelly dated 6 September 2014, Inquest brief, p129.

<sup>58</sup> Exhibit 12 – Remainder of Inquest brief, Statement of Senior Sergeant Glenn Parker dated 14 October 2014, Inquest brief, p145.

<sup>59</sup> Critical Incident Review dated 12 December 2014, Inquest brief, p384.

<sup>60</sup> Submissions of Chief Commissioner of Police dated 28 August 2015, p15.

87. I acknowledge a police pursuit is a challenging and dynamic environment. The evidence supports the view that some members had difficulty transmitting to D24 on the night, but I accept that this was due to a number of police units trying to assist with resolving the pursuit. Consequently, I make no criticism of the difficulties associated with D24 and I do not believe it adversely affected the outcome.
88. I agree that First Constable Austin made effective communications. Having listened to the D24 radio communications, First Constable Austin was calm, measured, and effectively communicated the circumstances of the pursuit.

### **Victoria Police Critical Incident Review**

89. Victoria Police conducted an internal review of the conduct of the pursuit (also known as CIMRC).<sup>61</sup> They made three key findings:
- The pursuit complied with current pursuit and urgent duty driving organisational policy and there was sufficient evidence to support the justification of the pursuit's continuance.
  - The members involved used sound judgement and displayed proficient risk assessment methodology.
  - The supervisors involved demonstrated good supervision and leadership during and post the pursuit.
90. Counsel for the Chief Commissioner of Victoria Police submitted that the CIMRC relied on all relevant materials which were before the Court including witness statements of the police members. He submitted that the *viva voce* evidence given by the members was consistent with their original statements. Further, that:
- cogent and compelling evidence would need to be provided before the Court could warrant a departure from these conclusions. The CIMRC is comprised of specialist and experienced police members who considered, amongst other matters, the conduct of the pursuit in light of policies and procedures.*<sup>62</sup>
91. Counsel submitted that "*the Court could comfortably arrive at the same conclusions as the CIMRC. To do otherwise would be contrary to the evidence before it*".<sup>63</sup> I agree with this submission and based on the evidence find that the police members involved in the pursuit complied with the Pursuit Policy Rules and procedures.

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<sup>61</sup> Critical Incident Review dated 12 December 2014, Inquest brief, p380.

<sup>62</sup> Submissions of Chief Commissioner of Police dated 28 August 2015, p17.

<sup>63</sup> Submissions of Chief Commissioner of Police dated 28 August 2015, p17.

## TRAINING OF VICTORIA POLICE MEMBERS

92. Senior Sergeant Allen gave evidence about the training provided to Victoria Police members. Training in relation to urgent duty driving and pursuits is based on theory and practice. Members are put through scenario-based exercises where they are required to pursue an instructor driving a mock offender's vehicle. During the mock pursuit the student must demonstrate safe driving, good risk assessment, and the application of the Pursuit Policy Rules.<sup>64</sup> The emphasis of the training is to ensure members apply safety first principles. Senior Sergeant Allen confirmed that an important component of all police driving courses is conducting a risk assessment, which is ongoing.<sup>65</sup> He commented that:

*Police drivers are trained to continually assess the risks involved in a pursuit, they are also trained to maintain a safe distance between the offending vehicle and themselves.*

*[...] We do not train police drivers to catch the offending car, or to force it off the road, but rather to be placed in a position where we can continually observe and monitor the progress of the offender.*<sup>66</sup>

93. Senior Sergeant Allen stated the primary objective of a pursuit is the safe conclusion of the incident.<sup>67</sup> He added that as a police member you are always looking for a reason to terminate the pursuit.<sup>68</sup> Constable Gales gave further evidence to this effect:

*A big part of our training in pursuits is resolving the pursuit. So the consideration that we're taught to take on board is that if a pursuit's not resolving or it doesn't look like its resolving, it's going for a longer period of time and we don't have a possible resolution on the way, then that would certainly be a relevant consideration.*<sup>69</sup>

94. Counsel for the Chief Commissioner submitted that the members had a good working knowledge of the policies and the particulars of their training<sup>70</sup> and that: "*all the evidence suggests they acted in accordance with their training, at all times being mindful of the considerations raised in the Policies*".<sup>71</sup>

95. First Constable Austin and Constable Gales were both up-to-date with their Operational Safety and Tactics Training (OSTT) training. I am satisfied that at Inquest, they were able to demonstrate understanding of their training and adequately applied their knowledge to the circumstances of the pursuit.

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<sup>64</sup> Exhibit 11 – Statement of Senior Sergeant Allen dated 9 December 2014, Inquest brief, p210.

<sup>65</sup> Exhibit 11 – Statement of Senior Sergeant Allen dated 9 December 2014, Inquest brief, p209.

<sup>66</sup> Exhibit 11 – Statement of Senior Sergeant Allen dated 9 December 2014, Inquest brief, p210.

<sup>67</sup> Transcript of evidence, p160.

<sup>68</sup> Transcript of evidence, p266.

<sup>69</sup> Transcript of evidence, p47.

<sup>70</sup> Submissions of Chief Commissioner of Police dated 28 August 2015, p18.

<sup>71</sup> Submissions of Chief Commissioner of Police dated 28 August 2015, p19.



## NEW VICTORIA POLICE PURSUIT POLICY

96. The Victoria Police Pursuit Policy Rules and Procedures in place at the time of Sano's death have previously been examined and criticised by Coroner Olle.<sup>72</sup> Coroner Olle made a number of recommendations in July 2014 in relation to pursuits, including that:

*Police should never pursue a vehicle simply because it is fleeing. A pursuit should only be undertaken where police hold a pre-existing belief on reasonable grounds that intercepting the vehicle is necessary:*

- *to prevent a serious risk to public health and safety; or*
- *in response to a serious criminal offence that has been committed, or is about to be committed, which involves serious harm to a person or persons.*

97. In October 2014, Victoria Police indicated they would implement this among other recommendations made by Coroner Olle.

98. Assistant Commissioner Robert Hill provided a statement to the Court and confirmed the new pursuit policy became operational on 13 July 2015, prior to the commencement of this Inquest.<sup>73</sup> Assistant Commissioner Hill explained the implementation of the recommendations and the key changes including:

- An amendment to the definition of a pursuit. Under the VPM, a pursuit is now defined to exist when police continue to follow a driver of a vehicle because the driver has failed to comply with the member's direction to stop and is taking deliberate action to avoid being stopped and the pursuit justification criteria are met.
- The introduction of additional clear criteria that must be met before a pursuit can be conducted.
- The introduction of a requirement that there must be at least two police members in the primary unit engaged in a pursuit.
- The introduction of a clear requirement that a pursuit must not be initiated in ordinary circumstances for any property or minor traffic offences.
- The introduction of a clearer decision making tool and risk assessment guide in the form of a flow chart for members to follow in relation to a pursuit.
- The introduction of a 'traffic light model' which guides members as to the weight that should be given to particular risk factors in relation to a pursuit.<sup>74</sup>

99. The Pursuit Policy Rules and Procedures in place at the time of Sano's death were not prescriptive. Rather it required members to use their training, knowledge and experience to

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<sup>72</sup> Findings into the Inquest into the death of Sarah Booth dated 14 July 2014.

<sup>73</sup> Exhibit 12 – Remainder of Inquest brief, VPM, Pursuits, Inquest brief, p457, Pursuit Policy Rules, p472 and Pursuit Policy Procedures and Guidelines, p482.

<sup>74</sup> Exhibit 12 – Remainder of Inquest brief, Statement of Assistant Commissioner Robert Hill dated 13 July 2015, Inquest brief, p452.

assess risk. When asked how the new policy would have applied to the circumstances of Sano's death, Constable Gales responded that they "*wouldn't have pursued*".<sup>75</sup>

100. Assistant Commissioner Hill explained that the new Pursuit Policy Rules are more restrictive in terms of the circumstances in which a pursuit would be conducted.
101. Counsel for the Chief Commissioner of Police submitted that the "*new policy demonstrates a commitment by Victoria Police to appropriately reflect and continue to strive to provide the best and safest policing services that it can to the citizens of Victoria*".<sup>76</sup>
102. The implementation of the new policy required members to undertake an E-Learning package on the new VPM within two months of its implementation. The E-learning package incorporates all the changes, priorities and expectations introduced in respect of the conduct of pursuits.<sup>77</sup> At Inquest, Constable Gales gave evidence that he had already undertaken the new training.

## **FINDINGS**

103. I find that Rutiano Chong Gum died on 5 September 2014 from 1a) HEAD AND NECK INJURIES IN A MOTOR VEHICLE COLLISION (DRIVER).
104. I find that on 5 September 2014, Sano was a probationary driver, driving a Ford Falcon station wagon displaying stolen registration plates. He had a blood alcohol concentration of 0.14g/100mL, which would have impaired his ability to drive.
105. I find the combination of Sano's blood alcohol concentration and his limited driving experience were instrumental in his collision with a taxi, in the context of being pursued by members of Victoria Police.
106. I find the evidence of First Constable Austin and Constable Gales was credible, truthful and compelling. I find that they both used their training and knowledge of the Victoria Police policies and procedures in relation to pursuits and their field experience to comply with the Pursuit Policy Rules and Procedures. I acknowledge the events of 5 September 2014 will leave a lasting impression on these young police members.
107. I find that Sergeant Kelly, as Pursuit Controller also complied with the applicable Pursuit Policy Rules and Procedures.

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<sup>75</sup> Transcript of evidence, p141.

<sup>76</sup> Submissions of Chief Commissioner of Police dated 28 August 2015, p19.

<sup>77</sup> Exhibit 12 – Remainder of Inquest brief, Statement of Assistant Commissioner Robert Hill dated 13 July 2015, Inquest brief, p455.

108. I find that communication with D24 was difficult on the night of 5 September 2014, due to the number of police units responding to the incident; however, I find that overall the communication was reasonable and appropriate in the circumstances.

109. Whilst I have found that the police members' actions complied with the Pursuit Policy Rules and Procedures in place at the time, it is clearly unfortunate that these policies supported a pursuit that not only involved the commission of a relatively minor offence, but driving behaviour which of itself was not dangerous for the majority of the pursuit. It is clear that the longer the pursuit continued, the more risks Sano was willing to undertake to avoid apprehension. In this context, I note that this incident had the potential to have resulted in multiple fatalities, given the direct impact between Sano's vehicle and a taxi as well as the presence of a pedestrian who was only just narrowly missed.

110. I acknowledge that Victoria Police have made changes to their policies and procedures regarding police pursuits and that under the new policy, this pursuit would not have been justifiably initiated.

111. Sano's death was a tragic combination of circumstances. I wish to express my sincere condolences to Sano's family. I acknowledge the grief and devastation you have endured as a result of your loss.

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

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

- The Chong Gum Family
- Chief Commissioner of Victoria Police
- First Constable Alexander Austin
- Constable Samuel Gales
- Sergeant Adrian Kelly

Signature:



JACQUI HAWKINS  
CORONER

Date: 8 October 2015



