

## **CRIMINAL LAWYERS ASSOCIATION OF THE NORTHERN TERRITORY SUBMISSION TO MARCH 2013 REVIEW OF NORTHERN TERRITORY POLICE GENERAL ORDER: EMERGENCY VEHICLE DRIVING (EVD) AND PURSUIT DRIVING**

*Perhaps the only thing more dangerous than a drunk driver on the road is a drunk driver being chased by the police!*<sup>1</sup>

### **1. INTRODUCTION**

The Criminal Lawyers Association of the Northern Territory Inc (CLANT) comprises over 200 members. It represents Northern Territory criminal lawyers from both the defence and prosecution sides, the public and private sector, and those who work in policy and in court.

Amongst CLANT's Objects and Purposes are:

- to promote and advance the administration of the criminal justice system and development and improvement of criminal law throughout the Northern Territory
- to actively contribute in public debates in issues relating to the criminal justice system
- to represent the views of members to bodies and persons engaged in the administration of criminal justice and in development of criminal law, procedures and civil liberties

This submission relates to a Police General Order made pursuant to s14A of the *Police Administration Act* NT, which accordingly is authorised by law and forms part of the criminal justice system.

CLANT welcomes the opportunity to contribute to the Review of the Emergency Vehicle Driving (EVD) and Pursuit Driving General Order ('the Police Pursuit policy') promulgated on 15 March 2012, and scheduled for review on 14 March 2013. This submission is confined to the part of the General Order which sets out the NT Police Pursuit Driving policy.

### **2. BACKGROUND**

On 7 December 2007, six residents of Hermannsburg, a small community 130 km west of Alice Springs, were killed when the car they were in overturned while being pursued by police.

Almost exactly five years later, on 22 December 2012, three more Hermannsburg residents were killed in tragically similar circumstances. This in turn followed a double fatality in Alice Springs on 7 April 2012, which too occurred after a (very brief) police pursuit. In each of these three cases, a driver suspected of committing a minor traffic or liquor offence drove away from police at speed. It has been found in the first two cases in time,<sup>2</sup> and is presumed

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<sup>1</sup> Alpert, GP & Madden, T "Police pursuits: an empirical analysis of critical decisions," (1994) *American Journal of Police*, vol.13, no. 4, 23 at 43; quoted in *CMC research report, Police pursuits*, 2003; cited in Coroner M Barnes, *Report on Police Pursuits – Policy Recommendations* (Queensland Office of the State Coroner, 9 March 2010)

<sup>2</sup> *Inquest into the deaths of Barbara Malthouse, Nigel Inkamala, Daryl Inkamala, Dion Ngalken, Gordon Murray and Antonia Meneri* [2009] NTMC 066 at [23]; ABC On-line report 22 March 2013 'Coroner clears police action in fatal car crash': accessed 31 March 2013 at

in the most recent case,<sup>3</sup> that the police involved complied with the applicable general orders, policies and procedures.

In relation to the first of these incidents, when he testified at the ensuing Inquest, the unfortunate constable who had driven the police vehicle demonstrated that he had learnt – at great cost – a crucially important lesson:

Personally I'm [now] very hesitant to engage in any form of pursuit however policing by its nature and doing highway work, which is what I do at Ali Curung ... doing this all the time, pulling cars over etcetera so I'd do the risk assessment a bit more critically I think and make that a more automatic part of pulling a car over. If the car did take off I'm not sure that I would you know pursue it just, just because *the risks as we found far outweigh the benefits* of catching the person ..."<sup>4</sup> (emphasis added).

Ten years ago, the Northern Territory Coroner delivered what he described as a short, blunt resumé: "the starting premise should be that such pursuits ought be rare, exceptional and to be avoided if at all possible".<sup>5</sup> Since then, at least 16 more such deaths have occurred on Territory roads.

This submission was prompted by the events described above. CLANT does not submit that police were at fault in any of these tragic events. Nor do we submit that had a restrictive pursuit policy of the sort we advocate been in force, any of these deaths would necessarily have been avoided.

Nevertheless, it is CLANT's submission that the NT Police Urgent Duty Driving and Pursuit Policy (2004) is outdated, dangerous and in need of an overhaul. Although over two years ago, in an Inquest arising from yet another death following a police pursuit, Coroner Cavanagh unequivocally recommended that the Policy be comprehensively reviewed and rewritten,<sup>6</sup> the new policy, introduced in March 2012, falls far short of a comprehensive rewriting of its 2004 predecessor.

### 3. THE NATIONAL SCENE

Over 170 people have been killed on Australian roads since 1990 as a result of police car chases, almost twice as many as have been fatally shot by police.<sup>7</sup> Overwhelmingly, the drivers being pursued are young males. So are their pursuers. Adrenaline rushes are not conducive to cool thinking, and those being pursued are in many cases also fuelled by alcohol and panic. In the great majority of cases, the pursuit is for a relatively minor matter.

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<http://www.abc.net.au/news/2013-03-22/coroner-on-alice-springs-double-fatal-police-pursuit/4589538>

<sup>3</sup> It is highly likely that an Inquests will be conducted in each of these cases: "As a matter of principle, all deaths where there is police involvement with the deaths should be investigated rigorously and thoroughly for the same reasons as deaths in custody are so investigated (or should be)" Above, n. 2 at [12]

<sup>4</sup> Above, n. 2 at [27]

<sup>5</sup> Inquest into the death of Annette Kunia [2003] NTMC 037 at [70]

<sup>6</sup> *Inquest into the death of Deryck Michael Calvert* [2010] NTMC 65 at [50]

<sup>7</sup> S Rattenbury MLA, A community discussion paper on police car chases (ACT Greens, July 2011), 6

This pattern is consistent in Australia and abroad. A further consistent – and disturbing – finding is that a third of police pursuits end in a collision.<sup>8</sup>

## **TASMANIA**

The Tasmanian police seriously restricted pursuits in 1999. The Tasmania Police Manual chapter titled ‘Urgent Duty Driving and Pursuits’ includes Order 14.15.4, as follows:

Members shall not sustain speeds in excess of prescribed limits, disobey traffic laws or engage in pursuits, except for:

- Emergencies involving obvious and immediate danger to human life; or
- The detection or prevention of serious crimes<sup>9</sup>

Consequently, in that jurisdiction there have been minimal injuries or deaths related to police pursuits since. Annexure A to this submission comprises statistical information provided to CLANT by Tasmanian Police Management Review Services, showing that between 2000 and 2012 in Tasmania there has been one (discontinued) police pursuit which resulted in a fatality, and one other police pursuit which resulted in a crash which caused minor injuries to four persons.

## **QUEENSLAND**

In 2010, acting on coronial recommendations made after ten separate Inquests involving police pursuits over 12 months,<sup>10</sup> Queensland adopted the following restricted pursuit Order:

### **Pursuable matters**

#### **ORDER**

Pursuits are permitted only where officers have a reasonable belief that an occupant of the vehicle:

- (i) will create an imminent threat to life; or
- (ii) has or may commit an act of unlawful homicide or attempt to murder; or
- (iii) has issued threats to kill any person and has the apparent capacity to carry out the threat; or
- (iv) has committed an indictable offence prior to an attempt by police to intercept the person;

#### **AND**

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<sup>8</sup> A Cameron, Independent Review of the ‘AFP Urgent Duty Driving and Police Pursuit Guideline Review 2007’ (2007) accessed at <http://www.justice.act.gov.au/publication/view/116>, 67

<sup>9</sup> ‘Pursuit’ and ‘Serious crimes’ are both defined at 14.15.3

<sup>10</sup> Barnes, n. 1 above.

(v) the imminent need to apprehend the person is considered justifiable given the risks of pursuing.

To remove any doubt, in every instance of points (i) to (iv) above, the imminent need to apprehend the person must be considered justifiable by officers given the risks of pursuing.

### **Non-pursuable matters**

#### **POLICY**

Matters which officers are not permitted to pursue include:

- (i) licence, vehicle or street checks;
- (ii) routine traffic interceptions where no other offence exists apart from failing to stop as directed;
- (iii) random breath tests;
- (iv) all simple offences (including traffic offences and evasion offences); and
- (v) indictable offences based on officer instinct alone or suspicion only (without supporting evidence).<sup>11</sup>

Experience both in Australia and internationally has been that when restrictive pursuit policies are introduced, while associated injuries and fatalities plummet, offending rates (notably, for car theft) do not go up.<sup>12</sup>

## **4. THE TERRITORY SCENE**

This debate is going on right across the country, but here in the Territory the arguments in favour of abandoning police pursuits in all but exceptional circumstances are particularly compelling, because of our exceptional circumstances: we have the nation's most dangerous cars on the nation's most dangerous roads driven by the nation's most dangerous drivers, an extraordinarily high percentage of whom have lengthy records involving unlawful, unsafe driving in defiance of court orders.

Running to 88 paragraphs, the existing NT General Order is unnecessarily lengthy, which makes it difficult to apply. In particular, paragraph 33 sets out a non-exhaustive list of no less than 20 separate factors which officers are instructed to consider when conducting a risk assessment when deciding whether to initiate or continue a police pursuit.

That decision must of course be taken with great rapidity. In practice, it is obvious that an officer faced with the decision whether or not to pursue will not have an opportunity to meticulously go through each of the twenty listed factors. What is worse, many of the factors are not supported by criteria which enable them to be easily or consistently applied. Factor (c) is 'the seriousness of the offence for which the occupants... are sought'. This begs

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<sup>11</sup> Queensland Police Operational Procedures Manual, 14.34.2 (accessed 18 January 2013); following Queensland Government, *Response to the Coroner's findings into the death of Caitlin Hanrick and the Coroner's Report on Police Pursuits – Policy Recommendations* (November 2010).

<sup>12</sup> Rattenbury, n. 7 above, 5-6

the question, 'how serious is serious enough to justify initiating a pursuit?' Similar criticism can be made of factors (a), (b), (d), (f) and (p).

This is to be contrasted with the Tasmanian and Queensland Orders cited above, which are both concise and clear.

## 5. CONCLUSION

Unless the existing General Order is reviewed and a restricted police pursuit is adopted, it is all but inevitable that sooner or later a fatal road crash will occur in the course of a pursuit being conducted by NT Police because they suspected that the driver of the vehicle being pursued had committed a minor offence (such as failing to stop for a RBT or unlawfully using a motor vehicle).

In many interstate cases, the lives lost in such incidents have been those of innocent road-users or pedestrians. Pursuits in built-up areas are particularly hazardous for obvious reasons. By the same token, pursuits in remote areas are particularly unjustifiable because the driver will almost always be easily traceable with the assistance of local community members.

CLANT supports measures already taken and under consideration to enhance the capacity of officers to detect, identify, track and even immobilise vehicles of interest. Such measures will serve to reduce the need to engage in dangerous pursuits.

We have an opportunity and a responsibility not just to save lives, but also money: each time someone is killed or seriously injured in one of these avoidable crashes, the economic loss, both private and public, is enormous.

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