



# Criminal Lawyers Association of the Northern Territory (CLANT)

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## SPEED KILLS

*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>

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, also after driving away from police at speed.<sup>2</sup> This in turn followed a double fatality in Alice Springs on 7 April 2012 after a police pursuit. In each of these three cases, police had suspected the driver of committing a traffic or liquor offence. It was found in the first case,<sup>3</sup> and should be presumed unless found otherwise in the two subsequent cases,<sup>4</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>5</sup> (emphasis added).

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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> Although the NT Police, Fire and Emergency Service Media Centre published a media release on 23 December 2012 quoting Superintendent Bruce Warren as stating that this crash occurred after a 'short pursuit' by police which had been aborted, at the time of writing it is yet to be determined whether or not there was in fact a police pursuit.

<sup>3</sup> *Inquest into the deaths of Barbara Malthouse, Nigel Inkamala, Daryl Inkamala, Dion Ngalken, Gordon Murray and Antonia Meneri* [2009] NTMC 066 at [23]

<sup>4</sup> It is highly likely that 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)" *Ibid.* at [12]

<sup>5</sup> *Ibid.* at [27]

It is now high time that this lesson is taken on board by the force as a whole. The NT Police Emergency Vehicle Driving and Pursuit Policy (2012) is dangerous and should be rewritten.

The Tasmanian police seriously restricted pursuits back in 1999, and as a result, in that jurisdiction there have been virtually no injuries or deaths related to police pursuits since. In 2010, acting on coronial recommendations made after ten separate Inquests involving police pursuits over 12 months,<sup>6</sup> Queensland adopted the following restricted pursuit policy:

Pursuits will be permitted only where officers have a reasonable belief that a person:

- o will create an imminent threat to life; or
- o has or may commit an act of unlawful homicide or attempt to murder; or
- o has issued threats to kill any person and has the apparent capacity to carry out the threat; or
- o has committed an indictable offence prior to an attempt by police to intercept the person; AND
- o the imminent need to apprehend the person is considered justifiable given the risks of pursuing.<sup>7</sup>

Restrictions of this nature do not apply in the Northern Territory, where, for example, pursuits may be commenced against drivers evading RBT stations.

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>8</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. 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>9</sup>

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: to put it bluntly, 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.

So, are we supposed to just let them get away with it? No. In some jurisdictions, the restriction of police pursuits has been complemented by the establishment of offences which specifically penalise offenders who evade police. And there are of course safe alternatives to car chases. I don't expect we'll see flying drones buzzing fleeing motorists over the MacDonnell Ranges any time soon, but these days patrol cars can be equipped with in-car cameras, automatic number plate recognition (ANPR) equipment and GPS tracking

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<sup>6</sup> Barnes, *op. cit.*

<sup>7</sup> 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>8</sup> S Rattenbury MLA, A community discussion paper on police car chases (ACT Greens, July 2011), 6

<sup>9</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

devices to enable absconding vehicles to be more readily identified and located.<sup>10</sup> More importantly, 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>11</sup>

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.

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>12</sup> Since then, at least 13 more such deaths have occurred on Territory roads. Disappointingly, the current Policy, which itself commenced only last year after repeated calls by the Coroner for it to be updated,<sup>13</sup> fails to apply the Coroner’s proposed “starting premise”. The Policy states that it is to be reviewed again on 14 March 2013. Whether or not the most recent tragedy in Hermannsburg is found to have been consequent to a police pursuit, it is high time now to follow the lead of Tasmania and Queensland, and establish a limited police pursuit policy.

Russell Goldflam  
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<sup>10</sup> At the more exotic end of this spectrum is StarChase, a compressed-air fired projectile containing a GPS tracking device which attaches to the target: see <http://www.starchase.com/>

<sup>11</sup> Rattenbury, *op. cit.*, 5-6

<sup>12</sup> *Inquest into the death of Annette Kunia* [2003] NTMC 037 at [70]

<sup>13</sup> For example, *Inquest into the death of Deryck Michael Calvert* [2010] NTMC 65 at [49]