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**NSW Police Force**

**OFFICE OF THE COMMISSIONER**

20 May 2024

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The Hon. Michael Daley MP  
Attorney General  
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Dear Attorney

On 24 November 2023, Deputy State Coroner Magistrate Erin Kennedy finalised the inquest into the death of Mr Andrew Stark. The Deputy State Coroner addressed two recommendations to the Commissioner of Police and one recommendation to both the Commissioner and the Minister for Police and the Attorney-General.

These recommendations, along with the NSW Police Force position on each of the recommendations, are included in the attached table.

Yours sincerely

**Karen Webb APM**  
**Commissioner of Police**

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## NSW Police Force (NSWPF) response - Inquest into the death of Andrew Stark

TAB A

Recommendations	NSWPF Response
<p>To the Commissioner of the NSWPF:</p> <p>1. That consideration be given to making amendments to the NSWPF Safe Driving Policy (2019 v9.2) [SDP] in the following (or similar) terms:</p> <p>a) Paragraph 7-2-1 of the SDP be amended to replace the words "<i>community and police</i>" with the words "<i>community, police and the offender</i>".</p>	<p>Supported.</p> <p>In December 2023, the NSWPF Commissioner's Executive Team developed a new Safe Driving Response and Operations Guidelines (the Guidelines) and the Safe Driving Public Policy Statement. The new Guidelines will be officially launched on 1 July 2024. Until the official launch the existing SDP remains in place.</p> <p>Recommendation 1(a) is supported and is referred to as part of the Guidelines. It forms part of the dynamic risk assessment police must undertake when determining the appropriateness of initiating and/or continuing a pursuit.</p>
<p>b) A new paragraph be inserted in the SDP between paragraphs 7-2-1 and 7-2-2 as follows:</p> <p>a. In weighing the need to immediately apprehend the offender, matters to be taken into account include:</p> <ul style="list-style-type: none"> <li>• The seriousness of the offence for which the police were initially attempting to stop the vehicle, and in particular; <ul style="list-style-type: none"> <li>○ the need to engage in the pursuit of a vehicle in relation to a road traffic offence without evidence that another offence, being of a serious nature, is likely to have been committed</li> <li>○ in relation to offences other than road traffic matters, whether the police are satisfied that a serious risk to the health and safety of a person exists</li> </ul> </li> <li>• the means that may be available to police to apprehend the offender at a later time (for example, the ability to use of a "form of demand" in relation to the registered owner, or where the identity of the driver is known).</li> </ul>	<p>Not supported.</p> <p>Police are already required to furnish certain information when relaying specifics to police radio at the commencement of a pursuit. This includes the reason for the pursuit being initiated.</p> <p>While police may exercise the power to stop a vehicle for 'an offence', it is relevant to note that there are other reasons police may stop a motor vehicle. This includes the purpose of exercising other powers (power to stop, search detain legislation, to exercise a power of arrest or detention etc).</p> <p>Failing to stop when directed by police is an offence and is sufficient to commence the appropriateness of initiating a pursuit. If police were to adopt the recommendation that 'a serious risk to the safety of a person existed before the exercise of the power' it would technically create a restricted pursuit policy.</p> <p>The recommendation seeks to exclude 'traffic offences', despite the loss of 327 lives on NSW roads in the 2023 calendar year. 'Road traffic offence' includes the contributing risk factors of speeding, illicit drug presence and impairment, alcohol, driver distraction, fatigue and non or incorrect use of occupant restraints. All of these categories are highly present as behaviourable factors which are present in fatal and serious injury crashes.</p> <p>To restrict the ability of police to curb the behaviour immediately at the time of detection, undermines state priority targets in respect of the reduction in fatal and serious injury crashes.</p>

	The existing SDP and new Guidelines both contain significant risk mitigation considerations including immediacy of action (with the latter requiring police to consider known and available information).
<p>c) Current paragraph 7-2-2 of the SDP be amended in the following terms:</p> <ul style="list-style-type: none"> <li>• insertion of the words <i>“In weighing the degree of risk to the community, police and the offender”</i> at the commencement of the paragraph; and</li> <li>• insertion of the additional factor as mater number (iv) under the second dot point:</li> <li>• <i>uncertainties concerning the offending driver’s age, abilities, state of mind, and the roadworthiness and number of occupants of their vehicle.</i></li> </ul>	<p>Partially Supported.</p> <p>Points one and two are supported and is reflected in the new Guidelines under ‘Pursuit considerations’.</p> <p>Point three is not supported in its current format as the factors are unknowable or not able to be readily discerned in most circumstances. There are, however, further considerations listed in the dynamic risk assessment framework of the new Guidelines, requiring police to consider known and available information.</p>
<p>d) Point (d) of paragraph 7-5-1 be amended so that the words <i>“reason for pursuit”</i> are replaced by the words <i>“the offence for which police attempted to stop the vehicle, and any other reason for the pursuit”</i></p>	<p>Not supported. The recommendation is not supported in its current format, as it restricts the ability of police to provide top tier enforcement, detention or the exercise of discretionary powers for the ends of traffic and policing road safety to be met. The new Guidelines have been expanded into considering the reason for the pursuit including any identified offences. As stated in response to recommendation 1(a), Failing to stop when directed by police – is an offence and is sufficient in and of itself to commence risk assessing the appropriateness of initiating a pursuit.</p>
<p>2. That training provided by the NSWPF to officers who may become involved in the conduct of pursuits be updated and revised in the following respects:</p> <p>a) to emphasise that in providing a “reason for pursuit” to VKG operators, what is required is a description of the offence for which the relevant vehicle stop was being attempted</p>	<p>NSWPF will always support the provision of training where deficiencies are identified, or further clarification could be to the advantage of officers in exercising their functions. The mechanics of the recommendation, however, can be broken down further as it contains further requirements that tend to restrict the provisions police currently employ to enforce the laws of the State:</p> <p>2a) Partially supported, refer recommendations 1a) and d). To adopt this recommendation unconditionally would require an offence to have taken place other than a reason (stopping a vehicle for RBT, exercise stop and search detain powers, effect a power to arrest or detain a person, etc)</p> <p>This would in turn subvert the ability of police to exercise these powers and send an unsafe message to the community that non-compliance has no further recourse.</p>

<p>b) to reinforce the fundamental importance of officers turning their minds to the question of the need to immediately apprehend an offender as part of the weighing exercise under the SDP before initiating or continuing a pursuit, and that in doing so:</p> <ul style="list-style-type: none"> <li>i) less serious offences (including most traffic offences) will in general carry a lower necessity to immediately apprehend; and</li> <li>ii) that other means by which it may be possible to later apprehend the driver (including by utilising the 'form of demand') must be considered</li> </ul>	<p>2(b) Partial supported. The weighing exercise referred to in this recommendation is already in existence and the absence of this knowledge may be due to the fact that quantifiable data is not captured which indicates when an alternative means of redress is used as an alternative to conducting a pursuit.</p> <ul style="list-style-type: none"> <li>(i) Not supported as traffic offences and the risk behaviours captured by traffic offences contributed significantly to the road toll in 2023, where 327 lives were lost on NSW roads.</li> <li>(ii) Other means of redress are already contained in risk assessment considerations in the incoming Guidelines. The NSWPF does not support the recommendation to include the word 'must', as it is unnecessarily and unreasonably restrictive, where the requirements of policing may require a more flexible approach based upon the specifics of any given situation.</li> </ul>
<p>c) to provide education, based on statistics such as those in the 2013 report of the Australian Institute of Criminology, (<i>Motor vehicle pursuit- related fatalities in Australia, 2000–11</i>) concerning factors such as the extent to which drivers involved in pursuits are affected by drugs and alcohol, age, cultural background, and other characteristics that are frequently common to drivers involved in pursuit fatalities;</p>	<p>Partially supported. Education and training will remain a cornerstone of police drivers. The new Safe Driving Response and Operations Guidelines will provide the opportunity for necessary attention to pursuit guidelines and risk factors moving forward.</p> <p>Education regarding risk consideration must be based on weighing factual and known information available to police at the time of the incident.</p>
<p>d) to discourage officers from making assumptions about the presumed "criminal intent" of drivers based on the mere fact of a failure to stop, and to appreciate the relevance of other factors such as age, mental state, cultural background, inability to pay fines and fear of loss of licence; and</p>	<p>Partially supported. The NSWPF does not consider that "uncertainties" of the type listed need to be elevated to express considerations in addition to the matters at 7-2-2(i)–(iii). The NSWPF has incorporated into their new Safe Driving Policy the factors to consider surrounding pursuits of the 'known and available' information.</p> <p>Current course material covers Pursuit Guidelines including 'driver [police] has no legal obligation to initiate a pursuit', 'consideration should be given to all circumstances including risk to police and other road users', and 'reasonable cause an offence has been committed or attempted to be and they are attempting to evade apprehension'.</p> <p>Critical decision making in engaging in police pursuits will be reinforced in the curriculum which considers the need to immediately apprehend the offender, the degree of risk to community, passengers and driver.</p>

<p>e) to emphasise the need for officers to consider uncertainties concerning the offending driver's age, abilities, state of mind, and the roadworthiness and number of occupants of their vehicle when assessing the danger of initiating or continuing a pursuit.</p>	<p>Partially supported.</p> <p>The NSWPF does not consider that "uncertainties" of the type listed need to be elevated to express considerations in addition to the matters at 7-2-2(i)–(iii).</p> <p>Considerations, such as the apparent roadworthiness of a vehicle or the number of occupants in a car are matters that already fall for consideration in an assessment of the degree of risk to the community involved in a pursuit. The NSWPF has incorporated into its new Guidelines the factors to consider before and during pursuits.</p>
<p><b>3. To the Commissioner of the NSWPF, the Minister for Police and the Attorney-General:</b></p> <p>a) That, with the co-operation of the Commissioner of the NSWPF, research be conducted and a report be produced by the Bureau of Crime Statistics and Research (BOCSAR), or another appropriate government agency, preferably one independent of the NSWPF;</p> <p>b) in order to understand the reasons for the significant increase in the number of pursuits conducted by the NSWPF over the last decade;</p> <p>c) with a view to proposing measures, including by reference to policies in other Australian jurisdictions, that might be taken to substantially reduce the number of pursuits undertaken by the NSWPF; and</p> <p>d) that the relevant report be provided to the Minister of Police, the Attorney-General and be made publicly available.</p>	<p>Supported.</p> <p>The NSWPF supports the conduct of research that will provide useful insights into the conduct of police and provide information that may assist in the furtherance of community safety, whether in connection with pursuits or any other aspect of policing.</p>