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NORTHERN TERRITORY OF AUSTRALIA

Case Nos: 9410034, 9410035, 9410038, 9410061
Rel Nos: A47/94, A48/94, A49/94, A50/94

CORONERS ACT

FORM OF INQUISITION

An Inquisition taken at Darwin in the Northern Territory, on Monday, 10th October 1994 through to Friday, 28th October 1994, before me Mr John Lowndes, the Coroner for the Northern Territory of Australia, as to when and by what means TAKESHI OKANO, AKIHIRO KABE, TIMOTHY DOUGLAS LINKLATER AND KEITH ALAN PRITCHARD came to their deaths and I find as follows:

PREAMBLE

At about 9.30 am on Tuesday 24th May 1994, a Ferrari F40 sports car which was participating in the Inaugural Cannonball Run lost control when approaching a checkpoint at Stuart Well, approximately 95 kilometres south of Alice Springs. This loss of control resulted in the Ferrari colliding with two vehicles parked at the checkpoint. As a result of the collision both occupants of the Ferrari, Akihiro Kabe and Takeshi Okano, were fatally injured. The collision also took the lives of two Cannonball marshals at the checkpoint, Timothy Douglas Linklater and Keith Alan Pritchard, who were killed when endeavouring to avoid the path of the out of control Ferrari. The fatal incident occurred on Day 3 of the Cannonball Run.

EVENTS LEADING UP TO THE FATAL ACCIDENT ON DAY 3 OF THE CANNONBALL RUN

Mr Adams, Counsel assisting the Coroner, provided a very helpful narrative which I propose to adopt, subject to any amendments which I consider to be warranted in light of the evidence or my evaluation of the evidence. Unless otherwise indicated or to the extent that it is qualified the evidence of various witnesses that forms part of the following narrative is accepted, and where accepted constitutes appropriate findings of fact.

Constable Ian Park was on duty at the intersection of the Stuart Highway and the Alice

Springs Airport access road. He says that he saw Mr Kabe's Ferrari approach this intersection about 9.05 am (although it seems certain that this time is somewhat early, having regard to Snr Constable Potts' timings). It appeared to be going 80 kph. As the car made a right hand turn at this intersection, Constable Park heard the engine noise increase and looking around, saw the rear of the Ferrari slide slightly out to its left, regaining stability before a second slight fish tail which was brought under control.

The next witness to see the Ferrari was, it seems, Douglas Gerald Adamson. He was driving along the Stuart Highway towards Alice Springs with the intention of meeting with friends to view the Cannonball Run competitors when, about 5 to 6 kilometres from the airport road turn off, he saw a red car coming up behind him about a kilometre away. This car was Mr Kabe's Ferrari. Mr Adamson was travelling about 80 kph when the Ferrari overtook his vehicle, going "very quickly". He said that as the Ferrari went past his car a white Porsche also overtook him with only about 2 car lengths between the 2 vehicles. At this point he noticed that the road was straight but undulating. Mr Adamson noted that there was a lot of traffic heading down the highway going south.

The next witness, it seems, from the point of view of distance from the turn-off, was Mr John Hayward. Mr Hayward said that he had travelled about 7 kilometres from the airport turn-off, parking on the southbound side of the highway to watch the Cannonball cars as they came through heading south. He said that he had a clear view of the road for approximately 2 kilometres in each direction on a straight road with only minor undulations. His recollection of events was that he had been in that position for about 10 minutes when he noticed, approximately 600 metres north of him, a white Porsche Cannonball Run car coming towards him, followed by a Ferrari. He said that the Ferrari passed the Porsche and then passed a civilian car, the Porsche following the Ferrari. The road was clear and the two vehicles passed Mr Hayward in the middle of the road. Mr Hayward believed that they were going in excess of 200 kph, although he acknowledged that it was difficult to accurately assess speeds; at all events, he said, "they were going very very fast". The two vehicles disappeared over a rise about two kilometres away travelling approximately 20 metres apart. Mr Hayward did not think that this was an unsafe manoeuvre. However, he did see something which was, in his view, very unsafe. He saw a small Japanese car, probably a Corolla, driven by an old lady going south at about 70 to 80 kph when two competitors approached it very quickly from

behind. The first of these vehicles overtook quickly and efficiently and the second, which was following very closely to the first, also overtook but cut in with very little room to spare, and the Corolla went off the road. Mr Hayward's view was that the Corolla left the road as a result of the second vehicle coming back in and cutting the car off. In respect of the vehicles that overtook the corolla, Mr Hayward's recollection was that they were the fourth and fifth competitors although there was some doubt about that. At all events they were in the lead group. He could not recall the colour of the vehicles but was certain that they were both Cannonball Run vehicles.

The reliability of Mr Hayward's recollection of events was called into question. It was true that he did not make a statement in relation to the matter until 2nd August 1994, a few months after the day of the fatal accident. His recollection of the order in which the Ferrari and Porsche were travelling is contradicted by the evidence of Mr Kahlbetzer and Mr Wallis, his navigator, who crewed the Porsche. Where the evidence of Mr Hayward and the crew members of the Porsche conflicts I prefer the evidence of Mr Kahlbetzer and his navigator. It is also noted that Mr Hayward showed some willingness to acknowledge the possibility, for example, that it was an optical illusion that the Ferrari came around the Porsche as well as the Corolla. However, despite all those features of Mr Hayward's evidence, I am reasonably satisfied that he witnessed an occurrence involving Cannonball Run vehicles and a civilian vehicle which resulted in a civilian vehicle leaving the roadway. In any opinion that was clearly a dangerous incident.

Mr Gregory Hutt and two friends were situated at about 10 kilometres down from the intersection of the Stuart Highway and the airport road, awaiting the arrival of the Cannonball Run. He saw the Ferrari in the distance flash its lights as it came up behind two vehicles heading south at slower speed. This was about a kilometre from him. When the first of the two cars was approximately 500 metres from Mr Hutt's position it pulled off onto the dirt verge and stopped, the second car continued, followed by the Ferrari and a Porsche. The Ferrari then over took the car in front of it, followed closely by the Porsche less than a car length's behind. Mr Hutt estimated that they were travelling at about 130 to 140 kph when he first saw them but were accelerating as they overtook, going out of sight over the crest of a hill. They were about 50 to 100 metres from the crest when the overtaking manoeuvre was completed. Mr Hutt stayed at this location for about another 20 to 25 minutes. During this time he noted that some of the later competitors who also

overtook southern proceeding traffic at or near this point did so nearer the top of the rise where, according to him, the drivers could not possibly see over the crest. Mr Hutt guessed that his position was about a kilometre south of Mr Hayward's.

Mr Hutt was not called as a witness, and hence the reliability of his observations were not tested. Whilst I do not doubt the witness' veracity, I am cautious as to the reliability of his observations in relation to apparently dangerous manoeuvres on the part of Cannonball Run vehicles.

The next witness was Mr Adam Ryan who, with his wife and others, was placed about 16 kilometres south from the turn-off to the Stuart Highway, where it intersects the road to the Bohning cattle yards. He says that he saw the Ferrari running ahead of the Porsche, the two cars separated by about two cars lengths going "faster than 160 kph". Mr Ryan had been involved with motor cycle racing and believed he could appreciate speed with reasonable accuracy, although he was unable to give any estimate of how much faster than 160 kph the vehicles were going. He says that he saw the Porsche pull out and run parallel with the Ferrari for a time as though it was overtaking, although he did not see such a manoeuvre actually executed.

Mr Ryan's evidence is essentially in conflict with the evidence of Mr Kahlbetzer and Mr Wallis. I prefer Mr Kahlbetzer and Mr Wallis as the more reliable witnesses.

So far as spectators were concerned, there are no witnesses available to the inquiry between Mr Ryan's position and about 50 kilometres or so further south, where Mr Ramm, with four others including Mr Mark Long were located for the purpose of viewing the Run. This group was located on the western side of the highway (north bound lane side), just over the crest of a hill, with a view to the south for a couple of kilometres, showing the highway undulating off into the distance, and to the north a sweeping left hand bend heading south as you come over the crest. Mr Ramm saw the red Ferrari come into view from the north about 400 metres away going at least 180 kph to 200 kph. As it headed into the distance and out of sight he saw the white Porsche being driven by Mr Kahlbetzer come into view. At this point the Ferrari's engine note was just fading away. He said that the Porsche was travelling very quickly, at least 30 to 40 kilometres an hour faster than the Ferrari. The group waited for the other competitors to come through. They were

mostly doing much the same speed but slower than the Porsche. He saw later competitors attempt unsafe overtaking manoeuvres, "a couple of close calls". The group went back into town when most of the competitors had come through.

Mr Ramm was not called as a witness, and therefore the reliability of his observations concerning unsafe manoeuvres and "close calls" must be treated with caution.

Mr Mark Long, who was with Mr Ramm, thought that the Ferrari was going between 200 kph and 240 kph and estimated that the Porsche, was possibly travelling at 260 kph but, at all events, certainly faster than the Ferrari about 200 to 300 metres behind, closing quite rapidly. At this point going south the highway was flat and straight for about 2 kilometres. It seems likely that it was about at this stage that the Porsche overtook the Ferrari, as related by both Mr Kahlbetzer and Mr Wallis.

The next sighting on the highway was by a group of marshals at the 87 kilometre mark where there was a sharp right hand bend requiring the presence of marshals to warn of the hazard. Four marshals were involved at this location, Mr Len Edwards 212 paces north of the apex of the right hand bend, Mr Garry Butterfield about 110 paces north of him, and Mrs Lyn Butterfield some little distance further north again. There was a road sign in this position warning of the approaching bend for south bound vehicles.

Mr Portlock said that he saw the Ferrari and Porsche approach and noticed that the Ferrari was starting to slow down to a speed of about 60 kph when it passed his location. The Porsche was going at about 110 kilometres. They were about 120 metres apart. As they approached the bend to the south of Mr Portlock's position they were about 20 metres apart, the Porsche having gained some 90 metres on this approach. The vehicles went out of Mr Portlock's view around the bend. Mr Portlock thought that the Ferrari had commenced to slow as it came up to two marshals to his north. After it passed Mr Edward's position it accelerated. As there appeared to be no reason for the Ferrari to slow so much Mr Portlock's assessment of the situation was that the Ferrari was slowing down because the driver believed he was at a check point. Mr Portlock did not think that the Ferrari actually went off the bitumen. The flags that were held by the marshals were the standard yellow caution flags.

Mr Garry Butterfield confirms Mr Portlock's evidence as to the positioning of the marshals. He recalls the white Porsche directly behind the Ferrari at a position about 1 ½ kilometres to the north of their position. The vehicles appeared to be travelling quickly, but he could not reliably indicate their speed. He and his wife were both waving their flags to warn the drivers of the approaching bend, and it seemed to him that both vehicles decelerated. As they passed him they were going about 120 kph, separated by about 3 to 4 car lengths. He saw the Ferrari's brake lights come on briefly just before it entered the bend, and disappear from view to the south. His impression was that it was slowing all the way from him to the bend, although he only saw the one flash of brake lights. Whilst he was at this location, most of the competitors were travelling about the same speed.

Mrs Lynette Butterfield's statement essentially tells the same story. She was positioned at a cattle grid at least 400 metres from the commencement of the corner, next was her husband Garry, and then Len Edwards who was approximately 100 metres from the corner. She recalls the police car driving past their position about 10 minutes before the Ferrari, which she could see coming over the hill about 2 kilometres away. Close behind was the Porsche. When they were about 200 metres away she started to wave her yellow flag in a slow figure of eight, and as they drew level the drivers acknowledged that they had seen her. The vehicles seemed to be slowing as they went past, and she could see brake lights on the Porsche as it approached the corner. She thought that later vehicles passed her position in the same way.

Mr Edward's statement again largely reflects those of the other marshals at this point. He could hear the sounds of vehicles approaching at speed, and looked in the direction of the sound towards the north. He saw Mrs Butterfield waving her yellow flag about 500 metres away from him. Mr Butterfield was between them about 200 metres to his north. He saw the red Ferrari come around a sweeping left hand bend towards them followed immediately behind by the Porsche. He thought their speed exceeded 200 kph and he also began to wave the flag to warn of the impending hazard constituted by the corner. As they passed him the gap between the vehicles was only about 2 to 3 metres, and they were out of sight within 20 seconds. A police vehicle passed their position about 5 minutes later, and then the next lot of Cannonball competitors. These vehicles seemed to be going around 150 kph, that is to say, much slower than the Ferrari and the Porsche.

Francena Edwards, who was not a marshal, was across the road from her father Len, attempting to take photographs. Her recollection was that the Ferrari was going very fast and did not appear to be slowing down. It was followed at a distance of about 2 or 3 metres by the Porsche. As they went passed it appeared to her that they slowed somewhat, and then went around the bend.

Mr Phillip Cotterill saw the Cannonball Run competitors as they passed him out the front of Jim's Place which is 5 kilometres from the check point. The lead vehicle, as he recalled it, was the white Porsche followed closely by the Ferrari, a position which was maintained as they drove out of sight. Mr Graham Buddle was in his work shop at Stuart Well, close to Jim's Place, when he looked up on hearing engine noise, and saw a white Porsche doing about 120 kph driving past his position followed about 3 or 4 car lengths behind by a red Ferrari going about the same speed. They were only in his view for about 2 or 3 seconds.

I have great difficulty in accepting the accuracy of Mr Cotterill's estimate of speeds. Having regard to the evidence of other witnesses I consider that he substantially underestimated the speeds of the Ferrari and the Porsche.

Mr Terry Karger watched the Run from the front gate of his homestead. He says that, looking north towards the Hugh River Bridge about 3 kilometres from the checkpoint, he saw a white Porsche about 200 metres away approaching his position, going about 250 kph, followed by the Ferrari a car's length behind. The Ferrari pulled out to overtake the Porsche, the two vehicles being level as they passed Mr Karger's immediate position. About 400 to 500 metres on, the Ferrari started to pull back in front of the Porsche. Mr Karger said that just prior to the Porsche and Ferrari going out of sight, a Range Rover towing a caravan came into view proceeding north. Mr Karger commented: "I thought to myself, 'Thank God the Porsche and Ferrari weren't a couple of seconds late because they may have hit the Range Rover'". The next 2 to 3 competition cars came through about 2 or 3 minutes later.

Mrs Karger's statement, broadly speaking, mirrors that of her husband with the additional observation that the Ferrari had not completely pulled back into the left hand lane by the time it commenced to turn the corner. It seems, however, that she did not recollect the presence of the Range Rover or her recollection differed from her husband's. She said that

her concern about the safety of the manoeuvre was "what if there had been a car coming the other way around the corner".

I do not consider that the overtaking manoeuvre described by Mr Karger was necessarily unsafe. Mr Karger's evidence is largely impressionistic. In any event he gives no estimate of the distance between the Porsche and the Range Rover when the Ferrari overtook the Porsche. Furthermore, Mrs Karger does not corroborate her husband in relation to the presence of the Range Rover.

Mr Peter Kimber was a flag marshal for the Cannonball Run whose position was just before a corner which led onto the commencement of the lay-by upon which the checkpoint in question was placed. He was in position by about 8.00 am but, when he had been there for about half an hour, Mr Fraser, in the initial pace car, asked him to move up the road a further 600 to 800 metres. Mr Kimber described this position as being right at the end of a 2 kilometre straight section and the commencement of a sweeping right hand bend. He was wearing an official marshalling uniform comprising a blue shirt with yellow sleeves and red cap. His flag was the same as all marshalling flags, yellow about 600 millimetres square.

About 30 minutes after being asked to move he heard the sound of approaching vehicles which he believed to be some of the Cannonball entries. Looking in that direction, the first vehicle he saw was a white sedan. A moment later, he saw the Ferrari F40 being driven by Mr Kabe behind the sedan. It was difficult to assess how close the vehicles were but the impression he got was that it was possibly only a few car lengths. Both vehicles were still about a kilometre away from him. He says that at this point he stood on the left side of the road and put his flag out and held the material taut so that he could be clearly seen. (It may be noted here that this was, according to the instructions for flag marshals, a requirement for a vehicle to stop rather than to proceed with caution). He considered that both the vehicles were travelling at high speed, somewhere between 160 to 200 kph with the Ferrari appearing to gain slightly on the white car. At one point it seemed that the Ferrari moved slightly to its right as if to commence an overtaking manoeuvre, but it returned into the left lane. When the vehicles were about 200 metres away, the Ferrari appeared to be very close to the rear of the white car with both vehicles appearing to be travelling at high speed, possibly about 160 kph. At this stage, Mr Kimber rocked the flag

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up and down to attract the attention of the drivers, but they did not appear to be slowing. When they came to about 50 metres from him he again saw the Ferrari pull out slightly as if it were about to overtake, but it drifted back into the left lane. There was no obvious sign of either vehicle slowing down. Moments later both vehicles passed him and he could see that the two cars were only about 1 or 2 metres apart. The Ferrari was slightly out to the right of the white car with the right side of the Ferrari on the broken centre lines. He thought, again, that the Ferrari was about to overtake the white car, but it moved back to the left. Both cars drove through the corner without any apparent reduction in speed.

Mr Kimber noticed that just prior to the lay-by the front end of the Ferrari appeared to dip down and turn in towards the check point area. Its speed appeared to have slowed slightly, but he would have put it still at some where between 140 kph to 160 kph. As the Ferrari entered the area it went out of control, rotating anti-clockwise. He saw the Ferrari drift side on into the gravel verge and towards the Cherokee. He saw someone run from the rear of the Cherokee (which was parked at the checkpoint) towards its front, but was unable to identify this person. Next moment there was a cloud of dust, and he could hear the sound of vehicles colliding. As he looked back along the straight at this point he realised a white Porsche was approaching, and he frantically waved his flag to attract the driver's attention. The Porsche drove past and onto the check point area. Mr Kimber then ran back along the straight a further 300 to 400 metres so that he could give earlier warning to other vehicles of the hazard caused by the collision and, in that next 15 minutes, several other vehicles arrived. Although Mr Kimber could not positively identify the white car he saw in front of the Ferrari, it is clear that it was the white Lexcen being driven by Mr Castaldi.

Mr Kimber gave evidence at the inquest. It is clear that his level of certainty about the speed that the vehicles were going when they passed him (ie 160 to 200 kph) was very much an impression. In the order of 1 to 10, with 1 not being very confident and 10 being completely certain, he placed his level of certainty at about 5 or 6. He noticed that the Ferrari, as it came up to the rear of the Commodore had to reduce speed, "otherwise he would have gone under the rear of it". His opinion was that at that position the view of the driver of the Ferrari of the lay-by would not have been obscured by the white car nor was there any reason why he could not have seen himself (ie Mr Kimber) and his flag. As to general traffic, he had seen about 6 civilian cars passing him heading south in the period

of approximately 1 hour that he had been in position before the white car followed by the Ferrari appeared. He said that the main traffic on the road was heading towards Alice Springs. There were one or two heavy vehicles, trucks or buses, and one or two caravans. However, he was not taking particular notice of the density or nature of the traffic. Mr Kimber did have some experience of speed, as he had raced on motor cycles for many years and was a keen motor sports enthusiast.

After carefully evaluating Mr Kimber's evidence, I consider his assessment of the speeds of the vehicles to be fairly reliable.

Mr Kimber described the general environment as flat country, and said that from his position he could see the yellow flags inside the traffic cones on the lay-by. However, Mr Kimber thought that the Ferrari may not have been able to see the checkpoint from where he himself was standing.

It is very much to the point that Mr Kimber would have in all probability had a view of the scene from a somewhat higher position than Mr Kabe sitting behind the wheel of a low slung vehicle like the Ferrari.

Mr Kimber did not notice any brake lights on the Ferrari but conceded that they may have been on and he failed to notice them. He described the movement of the Ferrari into the lay-by as being "more sudden than gradual", having entered the lay-by area from the highway. He thought that the Ferrari was doing about 140 kph when it moved into the lay-by.

Mr Adrian Todd had arranged to fly Mr William Yan and Mr McCafferty along the highway so that they could see the Cannonball Run from the air and for that purpose piloted a Cessna 210 which took off from Alice Springs Airport at about 8.45 am. He found the lead vehicles 40 to 50 kilometres from Alice Springs. The white Porsche was ahead of the Ferrari by about 1 kilometre. He thought it was travelling at about 180 kph, possibly slower. This estimate has to be considered with considerable caution since the Cessna was cruising at about 320 kph and had to reduce speed to pace the Porsche; moreover, this speed was well below the average that Mr Wallis, the Porsche's navigator, had calculated as necessary for them to "clean sheet" the section. Mr Todd estimated the Ferrari's speed

at about 200 kph (that is, about 10% higher than the Porsche's) and it took about 3 to 4 minutes to catch up to the Porsche, overtaking it, with the Porsche slowing slightly by perhaps 20 kilometres an hour. These vehicles maintained this position for about 30 to 40 kilometres. About 10 kilometres north of Jim's Place, where there is a sweeping right-hand bend, he noticed the Ferrari for no apparent reason suddenly reduce speed down to about 120 to 130 kilometres an hour. The Porsche appeared to do the same but then overtook the Ferrari. The Ferrari then followed the Porsche a couple of car lengths behind until both vehicles had negotiated the bend. At this point, the Ferrari overtook the Porsche quite quickly but once it took the lead it slowed to about 160 to 180 kilometres an hour, and the Porsche dropped back to a position about 400 to 500 metres behind. The Porsche was going about 160 kilometres an hour at this stage, possibly less. The Ferrari, he thought, was still travelling at about 180 kilometres an hour. At this point Mr Todd was able to see that the check point was about 2 kilometres ahead of the Ferrari. At a point that Mr Todd estimated to have been about 1 kilometre from the checkpoint the Ferrari drove up behind a white sedan (described as a Commodore but in all probability Mr Castaldi's Lexcen) which was travelling at a speed of about 120 to 130 kilometres an hour. Mr Todd saw the Ferrari manoeuvre out to its right a couple of times as if to overtake, but it did not do so. It was about 1 car's length behind. By the time the Ferrari got to the lay-by, Mr Todd thought the speed had reduced slightly probably to about 100 kph. The Lexcen continued to travel on the highway but the Ferrari veered off to the left and commenced to enter the checkpoint, at what he estimated to be 80 kph. He then saw its rear end start to slide as the vehicle yawed. It left the checkpoint area, and returned onto the highway but continued to yaw, moving left and then sliding towards the two parked vehicles at the checkpoint. He saw the Ferrari hit the 4-wheel drive vehicle and then dust was thrown up into the air, and he lost sight of the crash.

Mr McCafferty's first sight of the two vehicles was about 50 kilometres south of Alice Springs with the red Ferrari leading the Porsche. He said that at about the 87 kilometres point he saw the Ferrari slow down, and heard the Porsche request permission on the radio to overtake. The Porsche then overtook the Ferrari and a short time later, after the vehicles had cleared what he described as a "left sweeping bend", he saw the Ferrari overtake the Porsche. Mr McCafferty saw Mr Castaldi's car ahead of the Ferrari just at the start of the control point. He saw the Ferrari veer left sharply into the lay-by area. As it straightened up he noticed that the tail snapped towards the left, and his general

description of the Ferrari's behaviour is much the same as that of Mr Todd's.

Mr William Yan was also in the aircraft taking photographs. His recollection of first seeing the vehicles was that the Porsche was in front of the Ferrari by about 3 to 4 kilometres at a point about 20 to 30 kilometres towards Alice Springs from Jim's Place. He thought the Ferrari was going around 200 to 250 kilometres an hour, gaining on the Porsche. He says that they had been following the vehicles for about 5 minutes when the Ferrari caught up to the Porsche. He noted that there was not any other traffic on the road except a bus travelling up towards Alice Springs. After the bus had gone past the Porsche the Ferrari caught up to it and overtook, gradually pulling away from the Porsche. The Porsche kept up and about 200 to 300 metres separated the cars for the next 5 to 10 kilometres until the start of the bend coming into Jim's Place. Before the corner to Jim's Place he saw a person waving a yellow flag on the side of the road. This was probably one of the marshals at Mr Portlock's position. Mr Yan said that the Ferrari slowed quickly, possibly dropping down to 80 kph to 100 kph. The Porsche did not slow down quite so much, and caught up to the Ferrari on the corner and, when the road straightened out, overtook the Ferrari and pulled away. The Porsche was several 100 metres in front of the Ferrari when the Ferrari accelerated again and, after the left hand corner at the end of the straight after Jim's Place, caught up to the Porsche, and passed it on the next straight. At this point the cars were probably doing about 200 kilometres an hour. It is noted that this estimate is similar to those of Mr Kahlbetzer and Mr Wallis. After the Ferrari passed the Porsche it pulled away a small distance probably 100 metres or so. The cars started to go through left and then right corners leading to the straight on which the checkpoint was located. As the Ferrari came out of the last corner which led onto the straight into the checkpoint the Ferrari caught up with a white car which he thought was a Commodore, but which we know now to be Mr Castaldi's Lexcen. As the Ferrari caught up to this vehicle it slowed very quickly to about 80 kilometres an hour, moving slightly to the right-hand side of the lane although there was no attempt to overtake. The Ferrari pulled to the left to manoeuvre into the checkpoint, its brake lights came on, and its speed was noticeably slowing. It moved to go into the lay-by and slid to the left from the rear, over-corrected, slid onto the main highway with the rear end crossing over into the opposite lane (as Mr Yan recalls it) before slewing off the left-hand side of the road into the parked cars.

Mr Yan gave evidence at the inquest. His recollection was that the closest distance between the Ferrari and the Lexcen was, at one point, probably 3 to 4 feet but this was for less than a second. The Ferrari caught right up to the back of the car and then dropped back again. He thought that the Ferrari was within 2 car lengths of the Lexcen probably for the length of the straight coming up to the checkpoint. This distance was around 200 metres. He described the movement of the Ferrari onto the lay-by as "reasonably sharp".

Mr Paul Castaldi, a keen motor car enthusiast, travelled to Alice Springs with a number of friends intending to see part of the Cannonball Run. They journeyed ahead of the field with a copy of the route instructions (called by him "Pace Notes") obtained from a competitor. Accordingly, Mr Castaldi was aware of the position of the first checkpoint at the end of the first competitive section for that day's run. He said that when he first became aware of the marshals he slowed his vehicle from about 140 kilometres per hour to about 120 kph as suggested in the route instructions. It seems that the marshals to which Mr Castaldi referred were those with Mr Portlock. He approached what he described as a sweeping right-hand bend just prior to the checkpoint when he noticed headlights in the rear vision mirror, approaching fast. He saw approaching from behind a red Ferrari and the Porsche. The Ferrari was gaining very quickly and obviously had not slowed. He estimated its speed at about 200 kilometres an hour. He then accelerated to clear the checkpoint area. He says that the Ferrari came within 50 to 100 metres of the rear of his car, but did not appear to slow at all for the checkpoint. It seems that Mr Castaldi did not actually notice the Ferrari drive into the lay-by. He said that he had cleared the checkpoint area when he noticed that the Ferrari appeared to be out of control, and travelling sideways along the bitumen.

It appears from the photograph (Exhibit 4) that Mr Castaldi's vehicle could not have been any more than half way along the lay-by at the time the Ferrari actually turned left into it, having regard to the fact that he was still opposite the lay-by area on the highway when the Ferrari was in the position marked by Senior constable Potts at about 150 metres along the length of the lay-by.

Mr Clifford Stanley, a passenger in Mr Castaldi's car confirms in general terms Mr Castaldi's account. He says that when they saw the checkpoint the vehicle slowed to about 60 kph with the intention of stopping to watch the cars, and that when they were

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"100 metres past the check point Paul noticed the approach of the Ferrari and said something like 'Christ this things coming too fast' and...accelerated, and I turned around (and) I saw a big cloud of dust, there had obviously been a major collision". In this context the term "checkpoint" in Mr Stanley's statement is in all probabilities a reference to the commencement of the lay-by. On this account, Mr Castaldi accelerated after they had passed that point and were about half-way down the lay-by. This appears to be inconsistent with Mr Castaldi's recollection. It is somewhat difficult to distil from Mr Castaldi's evidence the point at which he accelerated to clear the checkpoint; however, it appears that he accelerated at or shortly before the commencement of the lay-by.

Also a passenger in the vehicle was Mr Leonard Edmond whose description, although general, broadly speaking is consistent with that of the other persons in the vehicle. However, it lacks any real details, especially as to how close the Ferrari got to the Lexcen.

Mr David Yule, the fourth passenger in the vehicle, said that they were driving to the checkpoint at a speed of about 140 kph, slowing to 120 kph at a point about 6 kilometres before the checkpoint, saying that this was consistent with the route notes. Clearly this was a mis-reading of those instructions. Mr Yule did not, however, observe the Ferrari coming up behind, although he recalls Mr Castaldi saying something like "here they come" (a reference to the Cannonball Run field) just as they negotiated a sweeping right-hand bend immediately prior to the checkpoint. As they proceeded he heard Mr Castaldi say something like "Christ look at this thing", and recalled Mr Castaldi accelerating to clear the checkpoint area. Mr Yule looked round and saw a big cloud of dust in the area of the checkpoint.

Mr Castaldi gave evidence at the inquest. His recollection, at that time, was that as he approached the bend at which he first saw marshals prior to the checkpoint (although this is clearly an error; it was sometime later than the bend where the group of marshals with Mr Portlock were positioned), he saw the lights of the Ferrari behind about 50 to 100 metres away. The Ferrari was accelerating relative to his speed, and he believed it was going at about 200 kilometres an hour. He also could see the white Porsche behind the Ferrari. He estimated that he first saw the Ferrari about half a kilometre from the checkpoint, but he was at that stage unable to see the checkpoint. He saw the marshal waving the flag from about half a kilometre away. He estimated his speed at this point

to be about 140 kilometres an hour. He thought when he got to the marshal that the Ferrari was somewhere between 200 and 400 metres behind. He categorically denied Mr Kimber's evidence that at this point the Ferrari was within a car length or so for some time and then within a metre to a metre and a half of the Lexcen. Mr Castaldi said that on the straight he was accelerating, and he believed that the Ferrari was about 50 metres behind when he looked into the rear vision mirror. He commenced to accelerate as he came round the bend.

Mr Castaldi's evidence as to the distance between his Lexcen and the Ferrari is in conflict with the evidence of every other eye witness. As regards that aspect the preponderance of evidence is against Mr Castaldi's estimate of the distance between his vehicle and Ferrari; and I do not accept Mr Castaldi's estimate as reliable in the circumstances. I consider that it is more likely than not that Mr Castaldi was mistaken (and reasonably so) on the aspect of distances. He would have been preoccupied with driving his vehicle, and that would have been his primary focus. His viewing of the Ferrari would have in all probability been secondary, and probably piecemeal.

It is true to say that the other occupants of the Lexcen may not have been similarly preoccupied to Mr Castaldi. However, the evidence of Mr Kimber and other eye witnesses as to distance between the Ferrari and the Lexcen is to be preferred as those witnesses were in positions external to the Lexcen, and made their observations from entirely different perspectives to that of Mr Castaldi and the other occupants of the Lexcen. Mr Kimber and others had a panoramic view of things, and I consider their evidence to be more reliable than the evidence given by Mr Castaldi and the other occupants of the Lexcen. Putting to one side the unreliability of Mr Castaldi's estimate as to distances, Mr Castaldi's estimates of speed appear to be, broadly speaking, in line with Mr Kimber's estimates.

Mr Bruce Wallis was the navigator of the white Porsche being driven by Mr John Kahlbetzer. This vehicle was the second to start on the morning of the third day, following one minute after the Ferrari. At about 50 kilometres out of Alice Springs the Ferrari slowed down and, following permission to overtake being sought and granted, the Porsche overtook it. About 81 kilometres from Alice Springs the Ferrari overtook the Porsche. At the 87.3 kilometres mark there was a tight right-hand sweeping bend and the Ferrari

decreased speed to approximately 80 kph. The road was clear so the Porsche overtook it after the bend. Shortly after, the Ferrari was behind the Porsche again. Mr Wallis and Mr Kahlbetzer realised that they were in the shut-down zone and reduced speed to 120 kph and, whilst doing this, the Ferrari overtook them. Just after this point Mr Wallis could see the lay-by. He estimated that the Ferrari was travelling between 200 and 220 kph. It commenced to brake, entered the lay-by lane, and lost control.

Mr Wallis gave evidence at the inquest and expanded this account. He recalled that it was necessary for them to average a touch over 209 kilometres an hour in the derestricted zone in order to arrive at the checkpoint without penalty. He says that they had no difficulty in maintaining this speed. From time to time, after having been detained by another car going somewhat slowly, it was necessary for them to go faster than the average in order to maintain it. In one section of the road they got up to about 240 or 245 kilometres an hour. At the point where the Ferrari overtook the Porsche the road, according to Mr Wallis, was "a really exceptionally good road". He believed that the Porsche was doing 240 to 245 kph when the Ferrari went past, perhaps going another 20 or 30 kph, and maintaining that speed as it pulled away. This was about 20 or 30 kilometres after the Porsche had initially overtaken the Ferrari. The Ferrari slowed down after the 87.3 kilometres mark just past a couple of flag marshals (obviously Mr Portlock's group), slowing to about 80 kph. At this point, Mr Wallis believed that his vehicle was close to being on time. They were "not wanting to be slowed up any more." The Ferrari, however, caught up to the Porsche at something more than a kilometre before what is described on the route notes as the shut-down point at 94.3 kilometres. The Ferrari overtook the Porsche as it was coming down from about 210 kph to the 120 kph required for the shut-down speed. Mr Wallis's view was that, as the Porsche was on time, it may well be that the Ferrari was behind time because it had commenced about a minute before at Alice Springs. Mr Wallis recalled that the Ferrari was still pulling away after overtaking when he (Mr Wallis) saw the lay-by. He thought that the Ferrari driver had seen it a split second before and he noticed his brake lights coming on at that point. Mr Wallis had only a hazy recollection of seeing Mr Castaldi's white car.

Although Mr Wallis's statement suggested that the accident occurred about 9.33, it is important to note that he was working off a stop-watch, not a clock. He distinctly recalled that his vehicle came in about 30 seconds under time.

Mr Wallis was of the view that Mr Kabe and Mr Okano were lost at the 87 kilometres mark and believed that the marshals who were there to caution drivers about the tight right-hand bend were warning of the imminent checkpoint which was, however, about another 7 kilometres further on. Although Mr Kahlbetzer thought that the Ferrari was going at about 100 to 120 kph when breaking commenced and he entered the lay-by, Mr Wallis's recollections was that the Porsche was just backing off from 200 kilometres an hour when the Ferrari overtook, going much more quickly, and it was only very shortly after that he commenced to brake and entered the lay-by. There was no doubt in Mr Wallis's mind that the Ferrari was going "much too fast" for entry into the control point. Mr Wallis described what happened as follows:-

Well it passed us. He pulled in and went just over the slight crest. We saw the finish, his brake lights came on and he appeared to be decelerating quite hard and he hadn't been slowing down for all that long and he started to move to the left and he got into the loose stones area.

Mr Wallis did not recall the Ferrari swerving off to the left suddenly but there was nevertheless a specific change of direction to the left and, when the Ferrari was on the lay-by it commenced to slew sideways. Mr Wallis's view was that there was still enough room for the Ferrari and that, if he had continued to slow in a straight line along the highway, he could have pulled up without a problem before the checkpoint.

Mr John Kahlbetzer was the driver of the white Porsche. His account of the journey between Alice Springs and the first checkpoint by and large confirms that of Mr Wallis. He recalls that as his Porsche came to the shut-down and decelerated to about 120 kilometres an hour the Ferrari passed at about 200 kilometres an hour. It almost immediately started to brake. Mr Kahlbetzer supposed the driver of the Ferrari had seen the control point. He said that he saw a "grey sedan" on the road ahead. He saw the Ferrari enter the lay-by, slew, re-enter the highway, and "nearly hit the car in front". Mr Kahlbetzer thought that the Ferrari moved to the right lane when the tail swung out, and the vehicle yawed into the marshalling area and hit the verge. Shortly after it hit the vehicles. He estimated the speed at impact at approximately 100 to 120 kph. He felt that although the accident was caused by driver error the risk of it occurring would have been reduced if there had been a clear indication of the shut-down zones by the use of signs,

and a better surface on the lay-by lane.

In his evidence Mr Kahlbetzer was unable to recall the actual average speed required in the derestricted zone to "clean sheet" this competitive section but recalled that it was in excess of 200 kph. He said, however, that he generally tried, whenever there were suitable conditions, to drive at a speed somewhat above the average in case of car problems or traffic was encountered, or there was some other circumstance that might slow their journey. In those sections, he said they were doing around 220 to 230 plus kph. Mr Kahlbetzer was quite positive that he only overtook the Ferrari twice. His recollection of the second occasion was that the two vehicles had slowed down for the corner which had been indicated by the flag marshals, but the Ferrari had slowed down more to 80 kilometres an hour. There was a double yellow line at this point so he had to wait to overtake the Ferrari, but as soon as they could they did so after radio communication. It was whilst the Porsche was overtaking the Ferrari that it actually pulled over onto the side of the road. Mr Kahlbetzer thought that some words spoken on the radio by Mr Okano at this time, which he had not understood, may have been "checkpoint, checkpoint", a realisation which he came to after discussion with Mr Wallis at the end of the day's run. He thought that just before overtaking, the Porsche was down to about 60 to 70 kph. He then accelerated to 230 kph, possibly even a little more, until the point just before the rise which comes into the checkpoint when he commenced to slow down to get to a speed which was appropriate for the checkpoint. It was in this position, about half a kilometre before the commencement of the lay-by, that the Ferrari overtook the Porsche. Mr Kahlbetzer thought that the speed that the Porsche was actually going at the point of overtaking was about 160 kph to 180 kph because the Porsche had commenced to slow down, although Mr Kahlbetzer had not then applied the brakes. He estimated that the Ferrari, which was coming up behind very quickly and had overtaken very quickly, could have been going between 230 kph to 240 kph. Once the vehicle got to the rise he saw the brake lights go on and continue on all the way to the deviation off the road onto the lay-by.

As to the Lexcen, Mr Kahlbetzer's first impression was that he noticed it first about 50 metres or so in front of the Ferrari at the point when the Ferrari went onto the lay-by. However, from matters that he later discovered he thought that the vehicle must, in fact, have been somewhat closer to the Ferrari or else have been virtually stationary on the

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road. Mr Kahlbetzer's recollection is influenced by the fact that moments after the Ferrari touched the lay-by he had thought that it was going to crash into the Lexcen. He reasoned that either that vehicle was much closer to the Ferrari than his first impression of 50 metres or else it must have been going extremely slowly, because the Ferrari was probably going about 160 kph when it hit the lay-by, and at the point of impact he thought it was going about 100 to 120 kph.

In my opinion Mr Kahlbetzer's estimate of the speed of the Ferrari should be accepted as a reliable indication of the vehicle's speed. Mr Kahlbetzer had first hand knowledge of how fast the Ferrari was travelling at the time it overtook his vehicle, and he was watching the Ferrari travelling in front of him after the overtaking manoeuvre. Furthermore, Mr Kahlbetzer's estimate was consistent with the estimations of other eye witnesses.

Mr Kahlbetzer concluded that the Ferrari was doing a minimum of 140 kph when it hit the lay-by, however he preferred to estimate the Ferrari's speed at that point at about 160 kph. In his opinion both 160 kph and 140 kph were too fast for the lay-by.

Mr Kahlbetzer said that he relied mainly on the route notes and the physical terrain for the purpose of determining the position of the shut-down zone. He said that he did see signs and flag marshals but "in most instances they were very difficult to see and, in my opinion, were inadequate". As it happened he did not recall seeing the sign that indicated the lay-by itself.

At the stage where the Porsche overtook the Ferrari, as the latter vehicle slowed right down because of the apparent error as to the position of the checkpoint, Mr Kahlbetzer and Mr Wallis were of the view that there was a potential problem with time so far as arrival at the checkpoint without loss of points was concerned. He said -

"We thought we still had 20 seconds up our sleeve but obviously if he kept going at 60 kilometres and we couldn't overtake I'd say that there was and there were a couple of caravans coming the other way when we hit the broken line or whatever, that 20 seconds would have been very quickly disappeared. So we asked him to hurry up. As it turned out, he didn't but we had the broken yellow line which was clear and at 230 or whatever speed it was we would have arrived

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easily within our time limit".

POST - ACCIDENT RESPONSE

As part of the coronial investigation a number of statements were taken in relation to the post accident response. Those statements which formed part of Exhibit 1 included the following:

- (1) The statement of John Igino Kahlbetzer who was one of the first on the scene and, amongst other things, had pulled the driver from the Ferrari, and assisted in giving medical attention to the navigator*
- (2) The statement of Bruce Robert Wallis who also assisted at the accident scene*
- (3) The statement of Peter Ronald Kimber who was instrumental in alerting other Cannonball Run traffic as to the accident*
- (4) The statement of Paul Castaldi who offered assistance at the scene*
- (5) The statement of Clifford Stanley Simpson who also offered assistance at the accident scene*
- (6) The statement of Norbert Olaf Tenthly Sergeant of Police, who responded to the accident call and requested the attendance of ambulance and fire rescue services. He was involved in general activities of liaison and co-ordination at the accident scene*
- (7) The Statement of 1st class Constable Denise Montgomery who applied first aid to Mr Okano.*
- (8) Record of Interview between Senior Constable Potts and Allan Moffat who was also in attendance at the accident scene*
- (9) Record of Interview between Senior Constable Potts and Susan McCure who was also at the scene of the accident*

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- (10) *Record of Interview between Senior Constable Potts and James Conquest who was also in attendance at the accident scene*
 - (11) *The Statement of Martin Patrick Toohey, clinical nurse specialist who assisted in removing Mr Okano from the Ferrari and administered him first aid*
 - (12) *The Statement of Joseph Alexander Cordaro, medical practitioner, who also attended the scene. The doctor assisted in attempting to resuscitate Mr Okano. The doctor examined an oriental male, how known to be Mr Kabe, and found him to be deceased. He also examined two white males officials and found them to be also deceased. The doctor, along with Dr Wharton, later pronounced Mr Okano dead.*
 - (13) *The Statement of Dr Kay Wharton who was also in attendance at the scene of the accident, and assisted in the attempt to resuscitate Mr Okano*
 - (14) *The Statement of Anthony Scott Oxford, paramedic, who also assisted at the scene*
 - (15) *The Statement of Michael John Walker, paramedic, who was also in attendance at the scene of the accident and offered assistance*
 - (16) *The Statement of Peter Matthew Lane, a Senior Constable of Police, who assisted the medical team*
 - (17) *The Statement of Police Officer, Craig Michael Trezise, who helped to control traffic at the accident scene*
 - (18) *The Statement of John William Townsend, fire station officer, who assisted in the rescue operation*

After carefully reading the above material I am satisfied as to the following matters:

- (1) *that there was an adequate response to the accident by all concerned*

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- (2) *that the accident scene was properly controlled and traffic appropriately diverted from the scene and*
 - (3) *that medical and paramedic personnel and others at the scene did all they could to assist the four persons involved in the accident.*

THE EXPERT EVIDENCE IN RELATION TO THE ACCIDENT

(1) THE EVIDENCE OF SENIOR CONSTABLE MICHAEL WAYNE POTTS

Senior Constable Potts is attached to the Accident Investigation Unit, and was the officer in charge of the investigation into the fatal collision in the Cannonball Run on 24 May 1994. The Senior Constable had prepared a report to the Coroner which formed part of Exhibit 1 in the coronial proceedings.

At pages 18-19 of his Report Senior Constable Potts undertook the following reconstruction of the accident:

"As Kabe approached the checkpoint he drove up closely behind a Toyota Lexcen sedan which was preparing to pass the checkpoint area. Moments later Kabe braked heavily and veered sharply to his left and into the checkpoint area. Almost instantaneously the Ferrari side slipped to the left. Kabe endeavoured to apply steering correction to the left however too much was applied. This over correction resulted in the Ferrari undergoing a rapid weight transference to the right. This has resulted in the Ferrari moving off the checkpoint and out onto the Stuart Highway, the Ferrari now side slipping to its right.

Once on the Stuart Highway, Kabe unsuccessfully attempted to control the Ferrari, which by now was in a total broadside and on a collision trajectory for a Jeep Cherokee parked at the gravel verge at the far end of the checkpoint. The Cherokee was parked at 90° to the checkpoint, the rear of the vehicle closest to the checkpoint.

Parked parallel to the Cherokee and on the drivers side of the vehicle was a Holden Commodore sedan. The rear of this vehicle was also closest to the checkpoint. These vehicles were approximately 3-5 metres apart.

At the time the Ferrari entered the checkpoint area, two Cannonball officials, Timothy Linklater and Keith Pritchard were positioned near to a table set up at the rear of the Cherokee. It is a possibility that both were seated at this time. Also in the area of the table were two Japanese media representatives waiting to take photographs of some of the Cannonball competitors as they entered the checkpoint.

Realising the Ferrari was out of control, Pritchard waved his arms about frantically trying to direct the Ferrari away from their location. Moments later, and realising the Ferrari was travelling towards them, Linklater and Pritchard began to run towards the Cherokee and Holden.

Linklater ran to a position that placed him on the left side of the Cherokee near to the rear axle. Pritchard ran to a position between the Cherokee and the Holden near to the rear axle of the Holden.

The Ferrari by this point in time commenced its primary impact with the Cherokee. The rear right side of the Ferrari came into contact with the Cherokee in the area of the rear axle. Linklater was trapped between both vehicles at this time, death resulting from injuries he sustained.

As the Ferrari impacted with the Cherokee, it is believed that Okano tried to lean away from the passengers door which in turn caused his head to tilt towards Kabe. As the impact took place, both Kabe and Okano were accelerated rapidly to their right. Their bodies being restrained by full racing harnesses only permitted their head and necks to move to the right. This movement resulted in Kabe and Okano clashing heads, which in turn caused injuries culminating in their death.

The impact between the Ferrari and the Cherokee caused both vehicles to rotate in a clock-wise direction, the Ferrari rotating more rapidly than the Cherokee.

The impact between the Ferrari and the Cherokee also caused the right side of the Cherokee to lift off the ground, a height of 0.57 metres. Whilst still off the ground, the right front side of the Cherokee impacted with the front left side of the Holden sedan. It was during this impact that Pritchard was trapped between both vehicles,

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sustaining injuries that culminated in this death.

The impact between the Cherokee and the Holden has resulted in the Holden rotating in a clockwise direction. It was during this rotation that a third and final impact has taken place. This impact involves the Ferrari and the Holden. The Ferrari at this point in the collision has rotated around the front of the Cherokee. In its new position, the front right hand corner of the Ferrari collided with the front left corner of the Holden. These body areas remain in contact as all three vehicle now come to a stop."

Also part of Exhibit 1 was a statement made by Senior Constable Potts in relation to his investigation into the accident. Annexed to that statement was "A Speed Calculations and Collision Reconstruction." The first section of that document dealt with the establishment of co-efficient of friction. The co-efficient of friction values were to be found as follows:

- (a) Carriageway 0.598*
- (b) Checkpoint 0.532*

Pages 3-7 of the document are extracted as follows:

"The sideways centripetal force that accelerates a car towards the inside of a curve to make it turn a corner or follow a curved path, is produced by friction between the tyres and the roadway. The centrifugal force tending to make the car follow a straight line is produced by its speed, weight and the radius of the curve its centre of mass follows. If the centrifugal force is greater than the centripetal force, the car will start to sideslip and will not follow the curved path intended. The point where centrifugal force just equals the centripetal force is known as the point of critical speed. As a result, a physical relationship can be derived to compute this critical speed. The equation is derived from circular motion and is also used in the design of curves in road design.

To enable an estimate of speed from yaw, the investigator must have the following information:-

- a) Confirmation that the marks on the roadway are yaw marks.*
- b) The path the marks from which the radius of the curve followed by the vehicle can be found.*

- c) *The gradient in the direction of slippage.*
- d) *The coefficient of friction of the surface over which the vehicle travelled whilst leaving the yaw marks.*

The equation used to calculate critical speed is:-

$$v = ((gr(f + G)) / (1 - fG))^{0.5}$$

where: v = velocity in metres per second.

g = gravitational constant (9.81m/s²).

r = radius path of vehicle followed.

f = coefficient of friction.

G = gradient in the direction of slippage.

The radius path of the vehicle was established by measurements taken at the scene of the collision. In this instance measurements at the commencement of a yaw mark generated from the front left tyre of the vehicle were obtained. These measurements established a chordal distance of 15 metres. A measurement at right angles to the middle of this chord (middle ordinate) and extending to the yaw mark established a distance of 0.23 metres. The radius of the yaw mark can be calculated by trigonometry utilising the above measurements.

The equation to calculate a radius based on this information is:

$$r = C^2/8m + m/2$$

where r = radius in metres.

C = chord length in metres.

m = middle ordinate in metres.

Inputting the variables into the equation gives a radius of 122.40 metres. In most instances adjustments are completed to locate the centre of mass of the vehicle. After viewing the situation map, the centre of mass is located collinear with the line followed by the front left tyre. It is for this reason no adjustment of radius is required in this instance.

From skids tests conducted at the scene, the coefficient of friction has been established to be 0.532 on the checkpoint area. The crossfall, as previously mentioned is in the direction of sideslipping and as such is -0.04 metre/metre (1 in

25).

Inputting the variables into the critical speed equation results in a minimum speed of 86 kilometres per hour (24.05 metres per second).

To cross check the above data, additional measurements were taken of the yaw where the Ferrari was side slipping on the carriageway.

In order to complete this analysis, it should be noted that the Ferrari is sliding into the superelevation of the roadway, not away from it. This means that superelevation assistance must be added to the coefficient of friction for the carriageway.

In order to calculate critical speed, the radius of the path of travel by the centre of mass must be established. Data collected to enable this comes from the path travelled by the right rear tyre:-

Chordal Distance = 15 metres

Middle Ordinate = 0.50 metres

Inputting the variables into the radius formula establishes the radius of the path travelled by this tyre to be 56.5 metres.

To locate the path travelled by the centre of mass, half the track width (0.815 metres) must be subtracted from this figure. This establishes the radius to be 55.69 metres.

To calculate the critical speed of the Ferrari, the following data is imputed into the critical speed formula:-

Radius = 55.690 metres

Coefficient of friction = 0.598

Gradient in direction of slippage = 0.040

The above data results in a minimum speed to side slip on the carriageway of 68 km/h (18.90 metres per second). The results of this analysis would tend to support the results of the critical speed calculated on the check point area. It is considered reasonable that a vehicle would slow from 86 km/h to 68 km/h over this distance.

SIGNIFICANCE OF ESTIMATE

We can say that to sideslip (yaw), a vehicle has to be going faster than the critical speed of the curve of the calculated path of the vehicle. It may have been going much faster because any higher speed would be more certain to make it sideslip. Thus, the estimate is a minimum speed.

VEHICLE MOVEMENT

The Ferrari F40 sports car has been initially travelling in a westerly direction along the Stuart Highway when approaching the checkpoint area. The Ferrari has moved off the Stuart Highway and into the checkpoint area which is located on the southern side of the highway. Shortly after entering the checkpoint the Ferrari has commenced to sideslip.

The driver of the Ferrari (Kabe) has applied a steering correction to the right in the order of 1.15 degrees. This can be calculated by taking the wheel base of the Ferrari (2.45 metres) and dividing it by the radius of curve followed by the centre of mass and then taking the inverse tan of the result. This action induces a sideslipping action on the Ferrari causing the tyre scuff marks to be left on the checkpoint area. The majority of weight of the vehicle is on the rear side wheels at this point in time.

These type of tyre scuff marks are commonly known as yaw marks. In this sideslipping motion the rear wheels of the Ferrari track outside the front wheels, i.e. they do not travel in the same line. The Ferrari continues in this yawing motion with the whole of the vehicle on the checkpoint area. The Ferrari then arcs back towards the sealed carriageway. Theoretically, a driver could be accelerating or braking while making yaw marks, field experience however, shows that vehicles making these marks are usually not being braked or accelerated but simply being steered with no other control inputs.

A second steering correction has been applied to the vehicle after it has travelled back onto the sealed carriageway. This has been a steer to the left. This has induced a yaw of the vehicle in the opposite direction to the initial yaw, rotation now being in an anti-clockwise direction.

The vehicle manoeuvres increasingly broadside and travels back onto the checkpoint area and subsequently onto the gravel verge on the southern edge of this area. From here the vehicle then makes its way to its point of impact with the Jeep Cherokee 4x4.

RECONSTRUCTION OF VEHICLE MOVEMENT - IMPACT TO REST

At first contact, the rear right corner of the Ferrari was positioned at the left side of the Jeep Cherokee adjacent to the rear axle of this vehicle.

After first contact, the Ferrari pushes into the Jeep Cherokee making its way to a point of maximum engagement just forward of the rear axle. Forces generated at this stage of the collision cause the Ferrari to rotate in a rapid clockwise direction. The Jeep Cherokee in response to these forces also rotates in a clockwise direction but rotation is less severe.

Due to the height of the Ferrari, a force line has also been directed under the centre of mass of the Jeep Cherokee. This results in an anti-clockwise longitudinal rotation (lifting of the right side of the vehicle) to occur to the Jeep Cherokee.

The Ferrari, due to its rapid rotation has had a secondary impact with the Jeep Cherokee, the passengers door of the Ferrari impacting with an area in the vicinity of the "A" pillar of the Jeep Cherokee. There has been very little lateral movement between both vehicles at this point of the impact. This is evidenced by imprint marks found on the Jeep Cherokee. This stage of the impact would have had the effect of slowing the rotation of the Ferrari slightly but in turn increasing the rotational speed of the Jeep Cherokee.

After the initial collision between the Ferrari and the Jeep Cherokee, a second collision has occurred between the Jeep Cherokee and the Holden Commodore.

At first contact with the Holden Commodore, the Jeep Cherokee's right front tyre has been airborne to a height of 0.57 metres. This tyre has then impacted with the panelling just under the "A" pillar of the Holden Commodore. Maximum engagement is in the same location. This evidenced again by the fact that a tyre imprint mark was left on the panelling of the Holden Commodore.

Due to the position of forces at maximum engagement, the Holden Commodore was forced to rotate in a clockwise direction at a reasonably slow rate and the rotation of the Jeep Cherokee reduced slightly from its previous rate.

Whilst the Jeep Cherokee and the Holden Commodore move to their rest positions the Ferrari, still rotating in a clockwise direction, has a final minor impact with the Holden Commodore. This impact occurs between the front right corner of the Ferrari and the front corner of the Holden Commodore. Little rotation occurs between these two vehicles at this point, both vehicles remaining in contact when coming to rest."

Senior Constable Potts gave the following evidence at the inquest.

He told the Court that both the occupants of the Ferrari were wearing full racing harnesses at the time of the collision.

The witness conducted a thorough examination of the interior of the vehicle and found no obvious signs of impact between the occupants and the interior of the vehicle.

The Constable had prepared a survey plan in relation to the scene of the accident. This plan became Exhibit 3.

By way of explaining the plan, the witness said:

"From an accident investigation point of view, this is what we call an 'accident situation map'. This details essentially the area where the collision has occurred. If I start down here at - probably the best would be to start down this end. If we can just direct your attention to this end of the

situation map. This end of the accident scene is closest to Alice Springs. The other end, that's obviously heading towards Yulara. This part of the situation map denotes the Stuart Highway heading, essentially, in a westerly direction. We've got north indicated down here at the bottom corner. Off to the bottom end of the drawing we've got the extra lay-by area here where the Ferrari has entered, and we have a series of tyre friction marks which were left by the Ferrari on the checkpoint area. They have extended back out and re-entered the carriageway and proceeded for a short period on the carriageway before heading back again off onto the checkpoint and then onto the gravel verge where the collision has occurred. The remainder of the drawing, just to assist you with the vehicle movements, we've actually placed a scale model of the Ferrari on these marks to show you how the vehicle has actually moved from the start of the side-slip through to the impact."

As to where the Ferrari entered the lay-by, Senior Constable Potts said:

"The only way we could do that is you'd have to do essentially an imaginary projection mark back on that curvature here, which would bring you out somewhere between the 30 to 40-metre mark on this drawing. That is - but it's only an assumption on my part. From there it would appear that between that particular point there to - - -

The 30 and 40-metre mark to where we've actually picked up the movement of the Ferrari here at the 60-metre mark, the vehicle has managed to get itself from essentially - can I put an object on here?

Obviously, it's a lot larger. Entry for such a turn would normally be, in that sort of an order of approach for the Ferrari, this being the front, this being the rear, okay? So he's gone virtually from that angle ---

About 30 degrees? It'd be approximately - that'd be approximately 30 degrees.

From there he's managed to get himself in that distance from there to virtually another 45-degree angle, which is where we've picked him up here.

Which is at the 60-metre mark."

The witness said that for part of his calculations he had used a police sedan which has a very different configuration to the Ferrari. As to why the use of the police sedan would provide reliable information about what happened to the Ferrari the witness stated:

"What we're dealing here is what we call a 'critical slip situation' and to brief it right down, effectively there's very, very little difference between all sorts of vehicles - I'm talking about passenger car, sedans, that sort; I'm not talking about trucks - but essentially there is very, very little difference between these vehicles once they are in a sliding situation. Obviously, with different tyres, different capabilities, various vehicles will have an upper limit before they actually reach critical speed. So effectively, that is what's called as the coefficient of static friction, and it - that's fairly technical to explain, but essentially, some tyres have got better road-holding capabilities; suspension aids that as well. Other vehicle dynamics assist that at the same time. But what we're dealing with here is what we call a coefficient of dynamic or kinetic friction, which is just pure sliding motion. So all the benefits of a tyre and vehicle suspension have gone, so effectively, all vehicles will be the same."

The Constable said that the skid marks gave an indication of the course of the vehicle's path.

The witness was shown Exhibit 4 (the "Wheels" photograph of the Ferrari just prior to impact). Compared to the position of the Ferrari shown in the photograph, he placed the position of the Ferrari on the plan at about the 130 metre mark almost at a 45 - degree angle.

Senior Constable Potts gave the following evidence in relation to the significance of the loose aggregate surface on the lay-by:

"Effectively, when you start getting loose aggregate, that relates to a lower frictional value that's available for a car to do its steering, acceleration or braking. In this particular manoeuvre, to steer in any form of a corner we actually need an applied force to steer, or push the car towards the centre of a circle, theoretically, and the limiting factor for that, is that frictional value on the road. So you will find that, for this particular case, the looser surface would see Mr Kabe actually reaching critical speed a lot sooner than what he would, say, for example, on the carriageway itself."

He went onto say:

"Well, basically, the vehicle is in a compromise. It wants to go straight ahead but steer at the same time. So the tyres are wanting to go in two directions at once. Like I was saying, it doesn't really want to go dead in a straight line because, in this particular case, we've still got some steering control left. In a total skidding situation, yes, you would go in a straight line, but this particular instance, the tyres are in a compromise; they're wanting to go straight but sideways at the same time. So we've still got some from of steering control left".

The witness gave this evidence as to the speed range that would have led the Ferrari to perform in the way described:

"The way we do the analysis is to ascertain the actual path of - curve path of travel, which we obtain from the marks themselves. From that, we establish a radius, which I believe off the top of my head was about 122.4 metres, and from that we can calculate a minimum speed to side-slip of 86 kilometres per hour."

The Constable was asked to assume a minimum speed of 86 kilometres per hour and loose aggregate on the lay-by. He was then asked what effect that combination of factors would have had upon the course the Ferrari took. His evidence was as follows:

"The actual radius of turn would still be constant because that's a course that's been selected by Mr Kabe. The issue that you're dealing with now is whether or not he's actually going to reach critical slip or what will happen to that speed. In

effect, if you change your frictional value higher, that enables Mr Kabe to have better grip on the road for that little bit longer, so his critical speed will hold off a little bit. Last night I actually recalculated that out in accordance with a frictional value on the roadway, and that came out to be a minimum speed of 92. So if you would've transferred the carriageway frictional value over to the checkpoint, your critical speed now is 92."

The witness agreed that if the Ferrari were travelling at more than 86 kph but less than 92 kph, and the surface of the lay-by was the same as the highway surface, the Ferrari would not have reached that critical point.

Senior Constable Potts measured a total distance between the take-off point at Lasseters Casino to the checkpoint of 94.8 kilometres. He calculated the distance within the restricted speed zone from Alice Springs to be 10.6 kilometres. The remaining distance with no speed limit was calculated at 84.2 kilometres.

The witness told the Court that he travelled the speed - restricted area three times each time taking a shade over nine minutes. At all times the speed limit was obeyed. He assumed that was what the competitors would have done. On each occasion there was no hindering traffic.

The Constable said that the time set for category 1 vehicles over the 94.8 kilometres distance was 34 minutes 30 seconds. Taking off the nine minutes needed to travel up to the derestricted area, that left a time of 25.5 minutes to cover the balance of the distance, viz 84.2 kilometres. The witness said that an average speed of 198 kph was required to arrive at the checkpoint right on the allocated time "without chewing up any of the three-minute window." He went up to say that if a competitor averaged 224 kph he would use up all of the three minute window, and in effect arrive at the checkpoint three minutes early.

The witness agreed that for category 2 vehicles to arrive at the checkpoint on time an average speed of 171 kph was required. To arrive three minutes early would have required an average speed of 190 kph from a category 2 vehicle.

The witness further agreed that the corresponding average speeds for category 3 vehicles were 142 kph and 155 kph.

The Constable was asked to make a calculation upon the assumption that the trip from Lasseters Casino to the checkpoint was not subject to any speed limits. He calculated that in order to arrive at the checkpoint on time an average speed of 165 kph would be required of a Category 1 vehicle.

During cross-examination the Senior Constable gave the following evidence.

He said that as he approached the checkpoint on the day in question it was visible to him about a kilometre away due to the number of vehicles present at the checkpoint.

The witness agreed that the speed recommended by Racecage for entry into the lay-by was 60 kph. When it was put to the Constable that he had entered the lay-by in a flat fashion (as opposed to the entry that may have been made by the Ferrari) at 90 kph without difficulty he stated:

"What I did, when I initially calculated my speeds, I knew it was going to come out somewhere between 80 to 90, so I obtained the use of a police traffic car and did what I call a fairly shallow entry at 90 kilometres per hour into the checkpoint, much the same was as I would expect Mr and Mrs Smith to enter. At that particular stage, the back of the police vehicle had a little bit of an unsettled feeling, but it was in no way reaching critical slip. It wasn't until I re-positioned the traffic car so the right-hand side of it was on the centre of the carriageway, and then I essentially darted in."

At page 240 of the transcript Constable Potts stated:

"I never actually did an assessment on the actual curved path I did as such to calculate the critical speed. From doing a simulation run, I got up to approximately 110 kilometres per hour and actually started to go into critical slip on that same approach path."

The witness agreed under cross-examination that he had followed in his Commodore what he perceived to be the route of the Ferrari, gauging it by the tyre marks on the roadway.

Constable Potts acknowledged that at various stages of his report to the Coroner he had described the Ferrari as "darting" into the lay-by, and executing a sharp turn to the left. The witness said that is how it appeared to him as he drove the same route as taken by the Ferrari.

The witness was referred to page 623 of his report where he stated:

"As Mr Kabe approached the checkpoint he drove up closely behind the Lexcen. Moments later, Mr Kabe braked heavily and veered sharply to his left and into the checkpoint area."

The witness stated that was how he understood the movements of the Ferrari to have been.

The Constable agreed that the survey plan showed the tail of the Ferrari swinging to the left, there being an over-correction, followed by a swinging to the right and then a sideways skid into the accident scene. He agreed that what he described was exactly what Mr Perkins had described in his evidence. He went on to say that what he and Mr Perkins described was clearly inconsistent with the account given in Exhibit 4.

The witness told the Court that he had done some calculations to establish the speeds at which the Ferrari could have stopped in the lay-by. He gave the following evidence:

"What I've done here first off is I've taken my initial calculation based on the 86 kilometres per hour. I've done two actual figures here. One relates to the actual distance of sliding itself, the second figure I've got here is - relates to an addition of driver-reaction time of one and a half seconds on top of that again."

The Constable said that he had assumed a driver-reaction time of one and a half seconds.

The witness went onto give this evidence:

"Now, there obviously will be some dispute from some people in relation to that time. Driving instructors work off a half a second to three-quarters of a second. But for accident reconstruction, we have a tendency of giving a bit more benefit of doubt to people, give them - giving them virtually a second to perceive a hazard and then half a second to go for the brake or see or whatever they have to do, and get the mechanical aspects of the reaction time up and going."

Senior Constable Potts gave the following evidence as to his calculations:

"Working off the 86 kilometres per hour, we've got an actual sliding distance of 55.11 metres. If you add the reaction time of one and a half seconds to that, that gives a total sliding distance of 91.9 metres, and that's 86."

110 is an actual sliding distance of 88.95 metres, and adding your reaction time on top of that is 119.51 metres. 120 is 105.86 metres actual sliding distance, with reaction time it's 155.86."

The witness stated that the distance from the entrance to the lay-by to where the marshals' vehicles were parked was approximately 170 metres. He also stated that the entire length of the lay-by was 222.9 metres.

The witness stated that the advice of event engineers had been obtained in relation to the construction of the lay-by, and that the construction method was a normal method for such a lay-by.

The Constable was referred to pages 619 and 620 of his report where he raised the issue concerning route instructions. (Cross-reference to pages 480 & 481 of Exhibit 1). The witness had stated that there were two right sweepers immediately prior to the lay-by, and were not marked on the route instructions. The witness gave the following evidence in relation to the adequacy of the route instructions:

"What I went and did was, I actually compared what was on this sheet to see if in fact they all matched up. The only one I was a little bit confused about was those last left-hand and right-hand sweepers. The only other thing, I noticed that there

were several what I'd probably consider to be important items which were probably missing off the sheet. But then again, these are only a route instruction, not a - considered to be a guide for the safety; that's the way I understood it.

Most of the issues - again, I was just considering this to - in light of safety issues rather than anything else, was the lack of crests being noted on the actual route instructions.

Crests. I would assume - and obviously this is only my own personal opinion - that if you're doing anywhere near these sorts of speeds, one would like to be forewarned of any potential hazards like crests, floodways coming up, particularly if you're in a car like for the Ferrari, for example, it's so low to the ground. You don't particularly want to find yourself suddenly coming across something at our assume minimum speed 198 kilometres per hour and getting yourself in a horrible mess. The one that I was really concerned about was at the 62.6 mark."

The Constable gave the following additional evidence in relation to route instructions:

"Okay, on the route instructions it's got 63.3 floodway' and 'SO' meaning, go straight on.' The next entry was 65.3 which was a left-hand sweeper onto a floodway, then a crest. However the 62.6, 63.4 and 63.9, they're in fact three floodways there rather than one, and as I said, I was a little bit concerned in relation to that. There was also - I'll just read off my list here. At the 38.1 kilometres mark, there was a dip, a substantial dip in the road. 39.7 there was a crest. At the 49.1 metre mark there was another floodway. Again these crests are what I would consider from my own personal experience as a driving instructor to be a potential hazard. Okay, at the 50.2 there was another crest; at the 54.9 there was another substantial crest; there are the three floodways that I mentioned at 62.6, 63.4, 63.9. There were another couple of substantial crests at 68.7 and 69.9, and then again at the 85.5 and 86. - - -

85.5 and 86.5, there were two other crests which were worthy of noting. Again, this would be probably advantageous to have it, only from a safety point of view if you were contemplating doing an overtaking manoeuvre and you wanted a bit of

forewarning where probably it would be unadvisable to start contemplating it. But I don't know if that was the actual concept of the route instructions as a safety issue. That was only a guide. It wasn't meant for that. But I wasn't quite sure if that - if that was - should've been more of an issue that was meant for the route instructions for these sorts of competitors.

One thing that I did - one issue I did look at was perhaps Mr Kabe may've been a little bit confused and when we actually come up to the - came up to the checkpoint, there were two distinct right-hand sweepers, and that's quite visible in the photograph - exhibit 5, I think it was, is the last right-hand bend just leading onto the checkpoint. That wasn't on the route instructions. The only other details that are on here were some 2 and a half kilometres or so from the checkpoint, which is two left-hand sweepers. So one thing I did contemplate was perhaps if he's looking for the checkpoint, he's got a little bit of distance there to try and hunt for the checkpoint itself, because there's no information on the sheet to actually tell him where it is, bar the actual final mileage. There's no - what I'm getting at there is there's no actual land features to note there to assist him."

It was put to Constable Potts whether prior to the right-hand bend he observed any signs indicating the upcoming checkpoint. His response was as follows:

"I did recall the presence of a white sign. I didn't actually read it because I was concentrating more on where people were. There were several police officers walking around. I can remember seeing Mr Kimber who by that stage had moved up closer towards the checkpoint. There was also another police officer directing right near the entrance to the checkpoint trying to keep traffic out of it, and when I arrived I actually parked my car right at the entrance there. And I can only recall, vaguely recall, a white sign being up against one of those white posts, probably about 40 or 50 metres prior to that point there."

By that "point there" he meant the "00" point on the survey plan.

At page 248 of the Transcript after making observations as to the critical speed being 86 kph, the witness said that there would be a difference between a shallow approach and

a sharp veer to the left. He stated: "You're going to get a - your're going to get basically a different radius of turn into the lay-by area." He went onto say:

"what I've effectively done is, when I've calculated this speed, I've then had to ascertain if it was possible and why Mr Kabe lost his vehicle at the particular rate of - rate of speed. When I did my simulation run at 90 kilometres per hour and went in at a narrow - or a shallow entry, I didn't really reach critical speed as such, so now I have to look at either increasing speed or changing the actual - - -

Angle of entry to get a different radius of turn, and the only way to do that is to move my vehicle position out and come in on a different entry. As I've previously stated, on the shallow entry I went up to 110 kilometres per hour before I actually reached critical slip. However, when I re-positioned the police vehicle with the right-hand side of the car out on the centre of the road - I anticipated the entry point and got another police officer to stand on the far side of the road to assist me with that - I did a sharp entry turn and at 90 kilometres per hour, straightaway I —reached critical slip. The rear end of the car slid out to the left and at termination of the simulation run I got out of the car and examined the police vehicle's marks and compared them with the existing Ferrari marks and they virtually overlapped each other."

Constable Potts agreed that the critical slip speed for the Commodore was in fact going to be very little different to the critical slip speed of the Ferrari.

The witness estimated that the Ferrari had entered the lay-by at about the 35 metre mark.

When it was put to the Constable that the Ferrari could have entered at a shallow angle (ie somewhere between zero and ten metres), the witness gave the following response:

"Again, you can't get confused - actual distance along that lay-by of entry, you can still get a shallow entry at 30 to 40, or even at a 170. That's only a start point of entry. I'm talking about the position of the vehicle in relation to the lay-by itself.

I am assuming that if my shallow entry was at round about the zero to 10-metre

mark and come in nice and easy, exiting the corner and just driving - virtually following the tangent off the corner straight into the lay-by. So it's a fairly flat entry onto the lay-by area. Now, if I still want to enter at the 35 - approximately 35-metre mark but come in a lot sharper, then I have to actually come out from the centre of the road and dart in. And if I'm, trying to reach the same position of entry as where Mr Kabe did, then that actual approach angle of the vehicle has got to be a lot sharper."

The witness stated that had the lay-by been of the same surface as the carriageway, that would have raised the critical speed to 92 kph. He agreed that having the lay-by with the loose-surface meant that vehicles had to drive on it slower to remain in control.

Constable Potts said that when he drove on the lay-by, his vehicle did raise dust. He agreed that the dust being raised as shown in Exhibit 4 could be consistent with the vehicle only being on the lay-by and not having left it. The witness added that he saw no signs of tyre marks or skid marks on the gravel off the lay-by.

The witness was referred to paragraphs 25.5, 25.7 and 25.20 of his report, and asked whether his opinion had changed in relation to the manner of driving between Mr Kahlbetzer and Mr Kabe. He responded as follows:

"In relation to 25.5, that's - that comment I've made in relation to speed at the particular point, I would still adhere to that. That is one question I'd still have to have in the back of my mind, because at that particular stage I understood that they were approaching a shutdown zone and I found it a little bit unusual they - they'd still be wanting to do that sort of speed, given that - again, given the fact that they had a three-minute window available to them. Because at that - you've got to remember at - I think you even brought it up yourself, was that at 200 kilometres per hour, you're doing 50 metres a second, so it's virtually going to be within a matter of seconds before they get to the checkpoint area, so the overall distance, I would assume within the next 10 to 15, possibly 20 seconds - that's just off the top of my head - that would get from that point to the shutdown zone where they're supposed to go down to 120. It's just an unusual speed."

The Constable was then referred to his assumption that Mr Kabe was trying to adjust his arrival time into the checkpoint. It was put to the witness that assumption was based on a presumption that Mr Kabe knew exactly where the checkpoint was when he overtook the Porsche. Constable Potts stated:

"I am assuming that Mr Kabe at that point is not lost: he knows exactly where he is, and I just found it unusual at that stage, knowing he's that close to the shutdown zone, why he would still contemplate an overtaking manoeuvre at that point. Because as I just said, it's only going to be a matter of seconds before he's actually arriving there, so unless he's miscalculated horribly somewhere along the line and he's trying to make up a bit of time."

In the end the witness said that his assumption was based on the first assumption that Mr Kabe knew where the checkpoint was and where he was.

In response to the suggestion that later evidence rendered the first assumption unlikely, Constable Potts said:

"No, I don't agree with that. What I've heard so far is that there may be a confusion with - in relation to speedometer error with Mr Kabe. I would expect all of the Cannonball competitors, by day 3, to know how to read one of these and how to calculate velocity equals distance divided by time, exactly how much distance they've travelled. Mr Kabe had two stopwatches in the car, possibly three, I can't remember the exact number but I know for certain there were - there were definitely two in the vehicle. I would assume that based on this information here and the speedometer, they would be able to recognise."

By "this information here" the witness was referring to the race instructions. The witness went onto say:

"I would assume that, for example, going past Rowe Creek bridge, that Mr Kabe would know that he was going past Rowe Creek bridge because all that information was translated, and that he would know - on here it says '14 kilometres'. Now,

his speedo at that stage - say, for example, he was on a 90 percent - or 10 percent error factor - so 14 multiplied by .9 - his speedo would be reading 12.6. Or if it was 10 percent the other way, obviously you would have the error - but he would pick that up at the point, and some of the other charts I've seen by other competitors, they all appear to be doing that. In accordance with what I was pointed out before is that, beware, you have - - - "

At page 253 of the transcript Constable Potts gave the following evidence in relation to odometers of vehicles participating in the event, and Mr Kabe's behaviour as he approached the checkpoint:

"So what I was getting at was, effectively, all the competitors that I - that I was aware of, were doing that on the run, because as was pointed out earlier on, competitors were advised that their odometer may have been out, there may've been an error. So each of these locations as they go past, they really should be checking their odometer against what's on here to see if there is an error. And then after that, they would then go back and they'd see if there was a speedometer error, which means they would have to compare the distance that they're already travelled and a time that's already elapsed and see what actual velocity they've been doing up to that point. So they're - for example, their speedo might've been saying they were sitting on an average speed of 198, which is what's been calculated out, but if they did an assessment on what's already been done, their speed might in fact only be 170, for example. So they're going to have to make adjustments for that speedo error as well to stick to that adhered, 198 average velocity for the entire journey. Now, what I'm getting at is, at the end of the day is, I don't believe Mr Kabe was essentially lost. I'm - I'm fairly certain, I'm convinced in my own mind, that at the 87 kilometre mark there was a possibility that the only reason he slowed down at the point was he may have suffered some confusion and had to do a quick recalculation, because shortly thereafter - and I'm sure it will come out in the evidence later - he actually went up behind Mr Kahlbetzer's car and proceeded to follow him, and at the - Mr Karger's residence, then actually did the overtaking manoeuvre. I would assume that he's re-calculated that

he needed a bit more time, he was a little bit behind time, and he required at that particular point to do the overtaking manoeuvre to get there within a three-minute window. So in relation to that, I was a little bit confused as to why he would still contemplate doing an overtaking manoeuvre at the point, given the fact that he was so close to the shutdown zone anyway."

The witness appeared to be of the opinion that Mr Kabe had overtaken the Porsche 1.5 kilometres before the shutdown zone. The Constable considered that to be an indication of Mr Kabe trying to make up time.

It was put to the witness that having regard to the fact that the Ferrari took off at 9 o'clock, that the accident occurred between 9.33 and 9.34 am and that the time allowed under the rules was 34 and a half minutes, the Ferrari was slightly early in arriving at the checkpoint. Constable Potts responded as follows:

"Well, if that's the case, then why there - why then is there a need to try and push the car faster again to an overtaking manoeuvre, because what you're saying, he's there already on time so he's not theoretically going to lose points, so why then did he need to go harder."

The Constable did not agree with the suggestion that his hypothesis that the overtaking manoeuvre was undertaken to give the Ferrari driver time to recalculate did not fit with the actual facts of the accident. The witness gave this evidence:

"I don't agree with that. What I believe has got to be sorted out - and I'm not quite sure whether it will come out at all - is, the information that was given to me, it was a possibility that Mr Kahlbetzer thought there may have been a mechanical problem with the Ferrari that caused the slowdown at the 87 kilometres mark.

And we know by the way the Ferrari's been driving up to and after that point, it would not appear that the Ferrari has got any mechanical problems. I would suggest that a car's doing 200-plus kilometres an hour, if that happens to be the case, it would definitely show a mechanical problem quite quick. So if there's any - I don't believe, again, at 7 kilometres prior to the end of a section that he would

be that far out, given the fact that all the competitors up until day 3 have got used to doing check by check going past these locations and making adjustments for odometer and speed fluctuations. And Mr Kabe, again in evidence you've already had point systems of so many points he's lost on the first day or second day, and he's not that far behind apart from just overshooting a checkpoint, so his ability doesn't seem to be in question for calculating where his position is. I just don't find anything in conflict with that."

When it was put to Constable Potts that Mr Kabe was not one of the leaders the witness said that he was not aware of the actual accumulation points.

The witness agreed that there was no evidence of racing between the Ferrari and the Porsche.

Constable Potts was able to say that when the Ferrari entered the lay-by it was going faster than 86 kph. But how much faster he was unable to say. The witness then gave the following evidence:

"Okay, if you're dealing with the marks wholly and solely by themselves, any speed greater than 86 kilometres per hour would be more likely to induce a side-slipping situation as you're got here. If you're talking about the force of impact, that's something different because you've got to duplicate the same approach path of the vehicles towards one another. Effectively, the collision speed between these vehicles I wouldn't expect to be any greater than around about 40 to 50 kilometres per hour, at most. The only significant additional forces that have been provided - and it's in my report - is that the initial primary force line on the Ferrari was well to the rear of the vehicle which caused it to rotate quite rapidly, so it's getting a boost, so to speak, of angular velocity just from that rotation. So the actual impact speed itself mightn't have been that great but the rotation was that rapid it caused a significant difference in force."

The witness said that he was referring to both angular velocity or angular momentum.

The Constable then gave this evidence:

"All we can really say is that at 86, anything above that, it would certainly side-slip and it would be likely for you to get a slightly different radius of curve generated at a higher speed---anything above that (ie 86), all you can say with surety is that it would most certainly side-slip. You can't say with certainty you'll be able to generate the same curve path. It may or may no do that."

In other words the witness was saying 86 kph provides a lower limit but not a upper limit, and the path seen described gives a lower limit but not an upper limit.

At page 263 of the transcript Constable Potts told the Court that he was a police driving instructor. He was then asked whether he was able to say whether the risks of losing control of a vehicle are greater or lesser depending on the speed a vehicle is going. He gave the following response:

"This is where I was a little bit in conflict with what Mr Perkins was saying yesterday. I assume - and I actually teach people this - speed in relation to danger I view in the same way as dangerous act under section 154 of our Criminal Code where we have actual danger and potential, and the way I've used speed is in accordance with the risk factor, so to speak. An example of the risk factor I quite often use it, if we have one of those high-performance vehicles that go for the land-speed trials where all the conditions are considered to be safe, weather conditions are fine, the conditions of the surface used, the salt flats are perfectly conducive to high-speed runs of that nature, no public around, no nothing, would you consider that speed to be dangerous? Going by Mr Perkins' analogy, probably not. But by mine, the risk factor going into an unknown quantity, would automatically make that speed dangerous for me. If you go onto an open-road situation, any speed would have to be judged on the risk factor and the criteria used for that, as Mr Perkins pointed out, would have to be your surroundings and so on and so on, vehicle's capabilities, your capabilities as a driver, and at the end of the day that's a very, very hard assessment to make, say, from the air, watching competitors down on the actual roadway. There's a lot of things that need to be taken into

account when - sorry, assessing from a police officer's point of view, what is a dangerous speed. In fact, we've got legislation in place here under, I think it's section 30 of the Traffic Act, which gives us that criteria of assessment; it's in formal writing. It's not an exhaustive list but it's essentially a guide that we use, which is, the condition of the road, the use of the road, the nature of it, and the amount that's reasonably expected at the time, and on top of that, we've also got to possibly consider other factors, like, for example, if a 10-years-old is driving the car - that's not part of the exhaustive list, that's part of the criteria from considering whether the whole act is dangerous unto itself."

The witness said that taking into account the nature of the road etc, risks increase with speed.

Given a situation where one loses control of a vehicle or one is presented with a sudden or unexpected hazard Constable Potts was asked whether one's ability to overcome the situation would be affected by the speed of the vehicle. The Constable replied as follows:

"Obviously, if you - the higher speed you travel if something is going to go wrong, it's going to go wrong in a bigger way, and the end result would depend on how quickly you grab hold of the loss of control. If you're late at all, obviously it's going to go a lot further, a lot wider on a carriageway than what you would expect if you grabbed hold of it almost instantaneously."

The witness stated that the first thing to be taken into account was reaction time. He told the Court that for the purpose of accident reconstruction the reaction time was set at one and a half seconds. The witness then stated:

"for accident investigation we try and give benefit of the doubt, where possible, to the subject driver in question, because we want to know where his vehicle position is at that - at the particular point, and we can go back to that point and perhaps assess things like view obstruction and so forth."

The Constable said that one and a half seconds was the upper limit, giving the benefit of the doubt to the driver.

Constable Potts agreed that reaction time became more crucial the faster the speed.

The witness gave his opinion as to the difference between the kind of driving experience Mr Kabe had and defensive driving. He said:

"If you're going around a racing circuit, you'll learn to increase your own personal driving skill and keep going higher and higher, seeking your own personal limit and that of the vehicle, and obviously, as you improve and go to different vehicles, your skill level and ability to generally handle high speed will increase. What you don't really learn, and you don't really start to learn it, is how to control a vehicle till it goes out of control. And you don't learn that when things are going absolutely 100 percent correct. So the only way you're going to learn that is to be put into a situation where you deliberately lose control of the vehicle. Some people may get defensive-driving courses as such, and they'll learn that. But on a race track, if you don't go off to those dedicated courses, the only time you're going to find out whether or not you can control it, is to get yourself into that situation."

When asked whether the road from Alice Springs to the checkpoint in question differed in any way to the other stretches of road in the Cannonball, Constable Potts gave the following evidence:

"Well, the road surface itself is a lot more undulating. I noticed there was a lot of patchy areas where road works have been done. There are effectively a lot more crests and bends in that particular section. The only other comparison to that would be in between Darwin and Katherine, going through the Hayes Creek area where you're going through a lot of the hills there, there are a lot of winding roads. But essentially, I found, though, the road surface to be a lot rougher between Alice Springs and the checkpoint than what it was at any other section."

As to the width of the road he said:

"Well, actually, some sections on the Alice Springs side of it were a little bit wider. They actually appeared to me to have done some widening of the road, which had been done quite some time before, but in general, the road width as a whole would

probably remain the same."

(2) THE EVIDENCE OF WARWICK ROBERT KIERNAN

Mr Kiernan told the Court that he had the following qualifications:

- (1) A Diploma in Civil Engineering from the University of New South Wales.*
- (2) A Diploma in Highway Engineering from the University of New South Wales.*
- (3) A New South Wales Local Government Engineers Certificate.*
- (4) A New South Wales Local Government Town & Country Planning Certificate.*

In addition, he stated that he was a Fellow of the Institute of Engineers, a member of the Association of Consulting Engineers of Australia, a member of the Institute of Municipal Engineering (Aust), a member of the Australasian Institute of Traffic Planning and Management, a councillor of the Planning Research Centre in the University of Sydney, and past-president of the Australian Institute of Traffic Planning and Management.

Mr Kiernan said that he had been involved in road engineering and cognate fields of learning for over 30 years, and he presently practised as a consulting civil engineer. He did some consulting work for Unisearch.

Furthermore, for the last four years he had been involved in forensic engineering investigation which includes the cause of road accidents. Over that period he had investigated between 100 and 200 accidents.

Mr Kiernan told the Court that he had seen the material prepared by Constable Potts including the survey plan. He had also consulted with the Constable. Mr Kiernan had then prepared a report which became Exhibit 14.

In his report under the heading of "Collision Analysis" Mr Kiernan stated:

"The physical evidence collected on site by Senior Constable Michael Potts provides hard data for analysis of the possible factors contributing to the collision. This together with witness' statements enables possible collision scenarios to be examined of which one can be selected as the most likely.

The Ferrari tyre marks shown on the drawing MVA-1036 provide a clear definition of the path of the vehicle as it moved out of control along the lay-by. Vehicle speed can be assessed from these tyre marks in conjunction with vehicle damage and the following assessment traces the movement of the vehicle from rest to its approach to the lay-by checkpoint.

Collision Speed

The collision speed of the vehicle as it broadsided across the road into the parked vehicles cannot be readily determined from the resultant movement of the vehicles during the collision. However, given the circumstances of the impact and the crush deformation sustained by the Ferrari, it is considered that the collision speed was in the order of 50 to 60 kph.

Sideslip Speed

Assuming the collision point was chainage 175 (refer Sheet 1 MVA-1036), the vehicle broadsided in a straight line for about 20 metres partially on bitumen and partially on an earth/gravel surface. Adopting an average friction coefficient of 0.50 and a collision speed of 60 kph the vehicle speed 20 metres north of the collision point would be 79 kph.

The movement of the vehicle prior to the broadside was in a sideslip out of control as a result of driver steering inputs and possible braking. The tyre marks indicate that the driver moved his vehicle left into the lay-by and somewhere near chainage 60 (refer Sheet 1 MVA-1036) commenced to sideslip as a result of a turning and possibly braking movement where friction demand exceeded supply. His vehicle rotated clockwise and the vehicle moved out of control along a large radius curved path to the right and at about chainage 100, the vehicle had moved back to the carriageway. As a result of a further driver steering input, the vehicle curved to the left rotating anticlockwise and sideslipping out of control.

A check of vehicle speed based on the radius of the sideslip path at about chainage 120 showed that with a coefficient of friction of 0.60 and a sideslip curve radius of 81 metres, the speed was in the order of 80 kph. Thus it is considered the vehicle moved off the road carriageway towards the collision point at about 80 kph.

In the north where the vehicle first commenced to sideslip to the right at about chainage 60, the tyre marks are not as consistent as those closer to the impact point and speed estimation based on the sideslip curvature is not as reliable. Nevertheless the speed at the start of sideslip will be higher than 80 kph and given that the driver lost control, it is likely that some braking may have occurred and a speed in the order of 100 kph does not seem to be unreasonable. Tests carried out by Senior Constable Potts indicated a vehicle could sideslip at this speed in these circumstances.

Approach Speed

Further to the north where the Ferrari entered the lay-by from the road carriageway, the speed is likely to have been higher. This speed cannot be assessed readily from physical evidence and could have been anywhere between the estimated 250 kph over 1 km away and a speed of about 100 kph within the lay-by. If it is assumed that the Ferrari was travelling in the centre of the southbound 4 metre wide lane, and that the vehicle moved to the left at the start of the lay-by, then the lateral shift of the vehicle between the centre of the southbound lane and the tyre mark is about 5 metres. This lateral shift can be achieved at speeds up to 150 kph. Given that the driver lost control carrying out a relatively simple manoeuvre, it is possible that his approach speed in this order and being progressively reduced by the application of the brakes."

Mr Kiernan expressed the following opinion as to the factors contributing to the accident:

"The physical on site evidence together with observations of witnesses recorded in the report of Senior Constable Potts, has shown that similar to most road accidents, there are a number of road environment and driver performance factors that may have contributed to the accident. These factors include vehicle speed, road alignment, loose aggregate on the lay-by surface, the presence of other vehicles and the braking and turning movements of the Ferrari driver.

In general it is considered that the road conditions at the checkpoint and the lay-by dimensions were adequate for the designed purpose. Provided the Cannonball Run procedures were adhered to with respect to warning signs and drivers conformed to the shut down and lay-by entry speeds, it is considered that there were no additional safety measures required at this checkpoint.

The approach speed of the Ferrari cannot be determined from the information available. Thus the role played by vehicle speed in the accident is uncertain. However, given the road conditions were suitable for high speed and the adequate width and distance provided by the lay-by for braking, it seems unusual that an experienced high speed driver would lose control in these circumstances.

Therefore it seems likely that the Ferrari was travelling well in excess of the shutdown and lay-by entry speeds and made a sharp turning movement into the lay-by which exceeded that available road friction supply. The vehicle sideslipped, straightened and sideslipped in the opposite direction across the road and finally broadsided into the parked vehicles. This would have occurred over a period of about 4 seconds."

He concluded on page 7 of his report that "loss of control by the driver of the Ferrari was most likely the result of a sudden turning movement to the left followed by a steering correction. This movement was made at an excessive entry speed to the checkpoint lay-by."

At the inquest Mr Kiernan gave the following additional evidence.

The witness said that although he had approached the question of the cause of accident in a slightly different way to Constable Potts, he considered that Constable Potts' approach was valid.

As to the Constable's conclusions he stated:

"Yes, fundamentally what he did was acceptable practice for estimating the speed of vehicles. However, there was a difference between my speeds

and that of Constable Potts".

Mr Kiernan said that the difference was within acceptable limits.

Mr Kiernan was asked his opinion as to what speed the Ferrari was doing at the time it commenced to side-slip. His evidence was as follows:

"As he entered the - as he entered the lay-by, we don't know what speed he was travelling. We only have the evidence of speed when the tyre marks appear on the - on the road surface, but - - -".

The witness agreed that a minimum speed was calculable. He added:

"What I - what I did, where there was no tyre marks in which to make some substantial calculations, I assumed that the - the Ferrari was travelling on the southbound lane, in the centre of that lane, and then I worked out the speed at which he would be able to make a manoeuvre to the left and over to the known tyre marks on the road, and I felt that that - he could've made that manoeuvre in a distance of about 60 metres at speeds in the order of - of 120 to 150 kilometres an hour".

Mr Kiernan believed the Ferrari was probably travelling in the order of 100 kph at the time of the initial tyre marks.

Referring to the survey plan prepared by Constable Potts, Mr Kiernan gave the following evidence:

"We have a rest position here where the vehicle - Ferrari rest position. So what I did, I went from this rest position and calculated speeds back to the entry point that we've just been talking about. The position of the Ferrari at rest was facing in a westerly direction here after a collision with the Jeep Cherokee. The movement of the Ferrari was approximately eight metres in a rotating movement and a simple calculation on that suggests that it possibly was travelling at about 30 - 30 to 35 kilometres an hour after the

second collision. That's its post second collision speed. The initial collision was the rear end of the Ferrari struck the - the Jeep and that was the first collision. It then rotated and a secondary collision occurred against the side of the Jeep. We don't know what that speed was but looking at the vehicle damage and the fact that it moved, that's the Jeep moved about 1.6 - 1.6 metres, and just a general assessment of the situation I derived that the speed of the Ferrari at impact, that's the first impact, was in the order of 50 to 60 kilometres an hour. Working back from that we have a section about 20 metres in length where the Ferrari was broadsiding. If we use the friction co-efficient obtained by Constable Potts in his - in his test on the road surface, we find that the speed washed off between the impact and the straight line section where it broadsided is about 20 kilometres an hour. Therefore, I considered that the speed at the start of the broadside was about 80 kilometres an hour. Now, there's a classical yaw in this section following the broadside and, by using the traditional method of calculating a speed in a yaw, I found for the section round about a chainage of 100, that it comes out with a speed of about 80 kilometres an hour. Therefore, it - it seemed to be tying in with our - my assumed collision speed, the broadside wash-off plus the additional distance to here. Then I felt that the skid marks here were such that I wasn't able to make any calculation based on - on the yaw marks, so I - I assumed that there would be a - a loss of speed between the initial tyre mark and the point where I assessed the speed of 80 kilometres an hour. And looking at various friction characteristics and possibilities, I calculated that a speed in the order of 100 kilometres an hour, give or take 10 to 20 kilometres an hour, at the start of the tyre marks. That's - that's the only hard evidence we have associated with the vehicle. What happened in the last 60 metres between - between the tyre mark and the entry point, as I just explained, I looked at what sort of manoeuvre a vehicle has to make when travelling in a direction in the centre land - in the centre of the southbound lane and has to move over approximately five - four to five metres, a lateral shift of four to five metres, and I consider that the vehicle could have - could have made that manoeuvre at speeds in the order of 130 to 150 kilometres an hour, but we don't know what that speed was".

Mr Kiernan told the Court that he had chosen two entirely independent methods of attempting to derive the speed of the Ferrari just before impact. He said that because the two methods were independent and resulted in the same conclusion, they gave a reasonable assessment of speed at impact. The witness agreed that although somewhat higher, it was broadly in line with Constable Potts' estimates.

The witness stated that the Ferrari would have got out of control on the lay-by.

Mr Kiernan stated that the Ferrari was out of control from the start of the tyre marks to the point of collision.

The witness then gave the following evidence as to the movements of the Ferrari:

"It was a - he was - he made a - a steering manoeuvre to the left. He then made a straightening steering manoeuvre to the right. This is when control has been lost, as indicated by the tyre marks. Then he moved in a large radius curve or a larger radius - a reasonably large-radius curve and then a smaller curve to the left which is the curve that we're - we have estimated he was travelling at 80 kilometres an hour".

Mr Kiernan went on to say that it appeared from the skid marks that the Ferrari had moved left into the lay-by and it was as the vehicle turned right to straighten up in the lay-by that the vehicle lost control.

Elucidating the manoeuvre attempted by Mr Kabe, Mr Kiernan stated:

"Well, I would assume that the manoeuvre into the lay-by from a wide carriageway and a reasonable width lay-by he should've been able to make that manoeuvre without any - any problems, at an appropriate speed".

As to why Mr Kabe lost control, the witness said:

"... the friction demanded of his vehicle has exceeded the supply on the road and that's why he lost control".

In order for Mr Kabe to have retained control Mr Kiernan said:

"Well, he has to get that friction supply to whichever wheels were - in one case it may've been all four wheels, but he has to reduce that friction demand back to the available supply of the road".

Mr Kiernan stated the following:

(1) that the friction demand is the greatest as the front wheels are turned in a greater angle to the direction of the vehicle, and

(2) that by returning the front wheels back towards the direction that the vehicle is going, the friction demand is reduced, and at a particular time the supply of friction on the road surface will equal or be greater than the friction demand, and at that stage control is regained.

The witness went on to agree that Mr Kabe at one stage was correcting to the left with the result that friction demand became greater than the supply that the road surface was providing.

When it was put to the witness that Mr Kabe had over-corrected, Mr Kiernan said:

"Yes, I - the - the path of the vehicle is reasonably straight but he obviously was placing excessive demands on the friction supply, as it were, and he was out of control apparently through that skid mark".

During cross-examination Mr Kiernan gave the following evidence.

Mr Kiernan stated that there was excess aggregate on the lay-by. Mr Kiernan suggested in his report that one of the problems with excess aggregate is that vehicles may slip-slide if it is on a corner or on a bend, and where friction demand exceeds supply.

In his report Mr Kiernan had expressed a degree of surprise with the co-efficient of friction values as assessed by Constable Potts being - 60 for the carriageway and 53 for the lay-

by. He had commented that both of the values seemed a bit lower than would be expected for a dry bitumen road. It was put to Mr Kiernan whether he would have expected a greater difference between the carriageway and the lay-by surface for the co-efficient of friction. He gave the following evidence:

"It's very difficult to - to make a judgment not having seen the road, but, based on some photographs, it did appear to be excess - excess aggregate which could, at high speed, reduce that friction supply to a greater degree than the tests showed. It's possible that at 75 kilometres an hour, that the test was done, this is - this is a reasonable result. Possibly at higher speeds there may've been a greater difference".

Mr Kiernan had examined the Constable's calculations and methodology for establishing the co-efficient of friction. Mr Kiernan was asked whether the co-efficient is variable according to the direction that the tyre is facing when being applied to the road surface:

"I think you can get variations, depending where you make the test. The road - I haven't seen the road. We normally assume that it's consistent for the purposes of our calculations, but it could vary across the lay-by certainly, particularly when it's a freshly sealed lay-by. There may be more stones in one area than there are in another and that'll have an impact on the - the value, the friction value".

The witness said that there would be a difference in the tests due to the make-up of the vehicles themselves (for example, a Ferrari versus a Commodore).

Mr Kiernan told the Court that with any accident reconstruction one looks at the site of the accident, ie where it has occurred, and one then tries to work out how you arrived at the known position.

The witness was fairly confident about the final collision speed being about 30 to 35 kph. He stated that the post-collision speed of the Ferrari was 30 to 35 kph. He went on to say that meant that the Ferrari was going faster when it collided with the Jeep. He had assessed that "approximately 20-30 kph had been washed off the two collisions".

Mr Kiernan repeated that the speed of the Ferrari at the start of the broadside was estimated to be 80 kph. Relating that to the plan he said:

"The collision point is approximately chainage and we have a chainage here by the surveyor on the centre line of the road. All my report references refer to that. 175, chains 175, is the collision point, and at approximately chainage 155, about 20 metres back, I have assumed a straight broadside where the vehicle is broadsiding for about 20 metres and that's where I calculated 80 kilometres an hour".

As to the evidence of speed he stated:

"The physical evidence, the best physical evidence, is this vehicle yaw between that point of 1 - chainage 155 to round about chainage 110. We have a - a fairly traditional yawing movement of the vehicle and when you analyse the radius of that yaw you're able to determine the speed".

In Mr Kiernan's opinion the Ferrari was travelling at about 80 kph at the 130 to 140 mark.

The witness was fairly confident that Mr Kabe did not lose control on the carriageway. He said:

"He didn't leave any - any tyre marks. It is possible he could've, but from the tyre marks that we see there and the - the general profile that we have before us, I think it's not - it's not - it's not likely that he lost it on the - on the carriageway".

He went on to say that the most likely scenario was that Mr Kabe had lost control when he entered the lay-bay and was attempting to straighten his vehicle.

It was put to Mr Kiernan whether that was consistent with the Ferrari entering the lay-by at a sharper angle than may be allowed for on the road. He stated:

"Yes, the sharper the angle, the more steer given to the vehicle, the more

likely that it will exceed the friction on the road".

According to Mr Kiernan control of a vehicle is lost at a lower speed if attempting "a sharp left and then a sharp correction".

Mr Kiernan was of the opinion that a manoeuvre from the carriageway into the lay-by could have been safely effected at 130 to 150 kph. It was suggested to the witness that was on the basis of an assumption of a normal movement into the left-hand lane. The witness stated:

"A movement into the left-hand lane that does not cause the problem of excess friction - friction demand".

It was put to Mr Kiernan whether there was a manoeuvre that would get a vehicle in trouble entering the lay-by at a speed slower than 150 kph. His evidence was as follows:

"Yes, I - you could create a side-slip by entering at a number of speeds much lower than 150. My 150 kilometres an hour was a - a limit that I was suggesting that such a manoeuvre could be done. It is possible to do that without losing control, but of course a sudden steering movement by a vehicle at 100 kilometres an hour could - could lead to a side-slip".

The witness was of the view that the close proximity of the Lexcen to the Ferrari was a factor that should be taken into account in relation to the cause of the accident.

Mr Kiernan stated a driver in the Ferrari (having a height from the road level to the top of the vehicle of 1.13 metres) would have less sight distance ability than a driver in an average vehicle.

Mr Kiernan was given the following scenario:

"The Ferrari was not aware of exactly where the checkpoint was, that it is following this Toyota Lexcen closely at a speed around the corner of some - or the sweeper at around 160 kph, that there is a braking manoeuvre very

shortly prior to the lay-by and a veer to the left or a sharp veer ...".

He was then asked whether such a manoeuvre could be carried out at a speed of less than 150 kph and still cause loss of control. The witness' reply was "Yes".

It was then put to Mr Kiernan that if Mr Kabe had missed the warning to the checkpoint and seen it at the last minute, or too late, but still tried to enter the lay-by what would be the lowest speed at which he attempted to enter the checkpoint. Mr Kiernan's evidence was as follows:

"Given that he lost control of the vehicle about 60 metres in, it seems unusual, most unusual, that he wouldn't have been travelling at over 100 kilometres an hour as he entered, to lose control 60 metres further on. And given that we know the speeds further down through the yawing motion and the broadsiding. Given all those factors, it's very hard to suggest that he was going at speeds less than 100 kilometres an hour".

Mr Kiernan stated that he did not know where the actual entry point for the lay-by was as used by the Ferrari. As to whether the location of that entry point would make a difference to the calculations, Mr Kiernan said:

"I suppose it's possible that he - he may've entered the lay-by at a very short distance between the first tyre - the first tyre mark and where he moved across, and as we reduce the distance between where he made the manoeuvre and where the tyre mark is, the speed at which he can lose control goes down".

As to whether a minimum speed of entry could be suggested, the witness said:

"Well, we're speculating on when and where he moved across and what distance. You could put some sort of limits on the manoeuvre to the left, shall we say the lateral shift of the Ferrari from the centre of the southbound carriageway to the first skid mark. We could put a series of distances and speeds that would show the points where he - he entered at

certain speeds and could've lost control. I haven't done that".

At page 355 of the transcript Mr Kiernan stated that the presence of the Lexcen would have influenced the speed of the Ferrari and also influenced the behaviour of the driver of the Ferrari. As to how it would influence driver behaviour Mr Kiernan stated:

"Well, there are a series of events occurring as the Ferrari approaches the checkpoint. He is on a curve. He's just overtaken the Porsche some distance back. He possibly knows there is a checkpoint coming up. So he has a few things to think about. We've established that perhaps his sight distance isn't - good as the traditional car, so therefore there are other factors, behavioural factors, influencing the driver with his actions".

As to the proximity of the Lexcen to the Ferrari, Mr Kiernan said:

"Yes, I - the - the gap between vehicles that is normally considered an acceptable gap for traffic engineers would be a two second gap, and a two second gap at 100 and - well, let's say 100 kilometres an hour, is a distance of about 50 metres. I would think if he was travelling anything less than a two second gap away from the vehicle in front, he would be most conscious of that vehicle".

It was then put to Mr Kiernan that in his report that he had estimated the collision speed was in the order of 50 to 60 kph, and had adopted a collision speed of 60 kph for calculating the side-slip speed. Mr Kiernan was then asked if one adopted the lower order of estimate whether that made a difference to his calculations. He said: "Yes, it reduces the speed throughout the process".

He was then asked whether it was merely reduced by 10, or to some greater extent, he said: "For the purpose of the exercise, a 10 kph reduction would be reasonable".

The witness was then asked whether the calculated speed of 100 kph within the lay-by, which was already give or take 10 or 20, allowed for give or take 10 or 20 for adopting a lower collision speed. Mr Kiernan said:

"I think we're talking about 100 Kilometres an hour. Based on a 60 kilometre per hour collision speed, we're talking about 100 kilometres an hour in that area and I've suggested it could be 100 to 120, and possibly we could take 10 kilometres an hour off that estimate. So we're talking then about 90 to 110. That is not exact of course".

As to reconstructing the exact speed of a vehicle, the witness stated:

"At various - at various points through the - through the skid, you can possibly get a more accurate value of the speed, but in general terms we don't know the collision speed, we don't know the initial speed and all we can do is make a calculation based on that yaw mark to the left and I - I think we can be reasonably confident that that should be able to be calculated within a reasonable order of accuracy".

(3) THE EVIDENCE OF MR ALLAN GEORGE MOFFAT

Mr Moffat stated that he concurred with Constable Pott's account of the course taken by the Ferrari, and the cause and consequences of the Ferrari's loss of control.

Mr Moffat told the Court that he had difficulty accepting that the Ferrari entered the lay-by at around 140 to 160 kph. He explained his difficulty in the following terms:

"Well, based on the evidence that Senior Constable Potts gave us, that the possibility of the skid emanating, I believe - I am trying to paraphrase - between 86 and 92 kph, it always bothered me that some of the claims of the entry speed at plus 100, and certainly the figure you've just indicated, seemed - seemed too high to me".

The witness went onto say that given Mr Kabe's experience, he found it surprising that Mr Kabe was apparently unable to regain control of the Ferrari.

When it was put to Mr Moffat that the faster Mr Kabe was going the more difficult that task would have become, Mr Moffat gave this evidence:

"It does become more difficult. And the thing that I've been wrestling with for some months is I wouldn't have liked to have attempted to manoeuvre if I'd been in an F40 at the angles that have been deduced at much more than 100. I can't believe that he could have 'brung' himself to do it at speeds, at faster speeds. The temptation would have been, 'Look, I've lost it. I've lost the checkpoint. Just stop the car' - it had breaks like an F111 - and do a U-ey and come back in again'. But somewhere along the line he's made a decision to turn in, and he must have believed he could - he was going to get out of it".

After it was put to the witness that Mr Kabe lacked the requisite skill at the material time, Mr Moffat said;

"That's a reasonable assumption, although on the harsh side. It's - what goes through a drivers mind, you know, we're got the best computers in the world sitting on our shoulders and he was an international businessman, he didn't - he wasn't short on thinking power: I just can't believe - something strange happened".

Mr Moffat said that he would not argue with the suggestion that Mr Kabe may have simply overestimated his own ability.

However, Mr Moffat said that he was quite impressed by Mr Kabe's driving experience at Fuji Speedway, and "had no qualms that he couldn't handle the car". The witness added that had the organisers conducted a formal examination of experience as a prerequisite for participation in the event Mr Kabe would have clearly passed the test.

Mr Moffat was asked to comment upon the significance of the presence of Mr Castaldi's Lexcen. It was suggested to Mr Moffat that the closer the Lexcen was to the Ferrari at the time when Mr Kabe was attempting to "turn in and when he is attempting to control his vehicle" the significance of the Lexcen increases. Mr Moffat's reply was as follows:

"That's very fair, and if I can put it in words as I have been trying to picture the accident. Any time you are driving any vehicle on any road, if there is a car in front of you your awareness is a little bit more heightened. You are certainly not talking to your wife or your friends and you're not looking out the window, and that's not

when you look down to change the radio station. You're watching the car in front of us. If the Lexcen was anywhere near closer than as was described, Your Worship, Kabe was watching his back bumper bar and could have very easily missed the entry to the lay-by".

Mr Moffat added:

"Well, let's go a little bit more definitively. If he's watching the Lexcen going through that last little bit, jockeying around, it's fair to say that if he's looking at the car it would have looked like a block of flats in front of him. No matter how tall our cones were, he could have missed it, he could have".

Going on to describe the manoeuvres undertaken by Mr Kabe, Mr Moffat said:

"The catastrophe of the event is that after the first manoeuvre which he got out of - we've seen the cloud of dust - he's corrected as he should have, and gone back onto the highway, if he'd just let it go then".

Mr Moffat added that any correction would be instinctive.

The witness stated that Exhibit 4 showing the proximity of the Ferrari to the Lexcen rather supported Mr Kimber's description of the Ferrari having come up to within a metre or so of the Lexcen.

Mr Moffat said that it was quite possible that the Lexcen was a distraction to Mr Kabe given its position just before the photograph (Exhibit 4) was taken. He added:

"It is possible. When I feel so badly that when he went across he didn't let it go and, had he let it go all the way, the worst that was going to happen to him was like a bad golf shot, he was going to land up in the sand a little bit; it was very deep and very dense and he would have just stopped. But the marks show that he didn't even hardly go into the outside lane. There was no oncoming traffic, that wasn't a factor.

He had three lanes to play with there, and he may have felt that he couldn't get across at that time with the Lexcen in place, and hence, "Well, I've got to try it".

One of the features that the magazine shows that has not been brought out is the extreme attitude of his front tyres as a very strong, very strong, right-hand down, we say, which is right-hand lock. He's already stopping it from coming around.

His steering position would have been very much like this, but the car was going like that.

He was fighting it from actually going into a total spin.

You have to look closely, but the wheels are very - the wheels are pointing straight down the highway.

So he, at the time that picture was taken, was sliding in a - in a nasty fashion.

Now, I agree with you, the Lexcen may have forced him into that second manoeuvre beyond his will".

During cross-examination Mr Moffat gave the following evidence.

Mr Moffat was referred to his earlier evidence that Mr Kabe should have let go at a certain point. Mr Moffat was asked at which point he should have done so. Mr Moffat's reply was as follows:

"About here, which would be about 105, but certainly by - well even 100 - 102 to five, but certainly by 110".

The witness was then-referred to Exhibit 4 and his own evidence that the Ferrari's wheels were turned "with the right hand down", and running parallel with the white line. He commented as follows:

"He's in a big slide at that stage, yes. When I say big maybe I shouldn't say big,

but he's attempting and he's showing the classic driver correction, he is fighting the car and in no way could it be construed that he wasn't attempting to control it. It's a fairly brave manoeuvre I might add, it's not one that personally I ever enjoyed in any cars that I ever raced".

When it was put to Mr Moffat that from the 135 chain mark through to the point of impact at the 175 chain mark, there was nothing Mr Kabe did that would have influenced the direction of the vehicle, Mr Moffat stated:

"That's just about correct, it would have taken some enormous - we use the term tap dancing - it would have required some enormous anti-correct brake, recorrect, all of the time with a good cognisance of the flow of the vehicle, because once you get in a broken traction mode, you are in the hands of the momentum that physics just take the car. All the handling in the world won't help you that much if you don't have a lot of real estate to play with".

Mr Moffat stood by his earlier evidence that he himself would not wish to attempt the sharp left-hand turn under brakes that it is believed Mr Kabe undertook to get into the lay-by. He qualified that by saying:

"I think I was actually referring - I wouldn't want to have been trying it at 140 or 160 as some figures have been used, as to what was the approach speed".

He added:

"But I was referring - I personally wouldn't want to be attempting it at 140 plus".

Mr Moffat agreed that Mr Kabe did not take a shallow entrance from the highway to the lay-by. He added:

"Exactly. And that caused an immediate reaction which was equal and opposite, and that was when we saw the dust cloud come up or were fortunate to see a dust cloud come up. By dust cloud I mean the Wheels Magazine puff of white dust that Mr Riley referred to occasionally. That was the reaction to the initial movement".

The witness agreed that at about the 90 to 100 chain mark the vehicle could have kept going straight. He stated:

"That is when I say 'let go'. The term is: 'Let go of the forces'. By letting it go he would have just let the momentum and the tension that was in the vehicle float out and by virtue of the real estate that was in that direction, and at the very worst land up in the sand over there. That is what I meant by 'let go'. I'm not saying 'Take your hands off the steering wheel'.

You go with the flow that physics has ordained, given this original - whatever the speed.

Mr Moffat stated the response of "letting go" would have required a "high degree of commitment".

The witness believed that "letting go" would have been the best option.

Mr Moffat believed that the over-correction had occurred between the 100 and 120 chain mark.

The witness was referred once again to Exhibit 4. Mr Moffat said that the photograph showed the Ferrari to be still on the roadway at about the 135 mark. Mr Moffat went onto say:

"What we will never be able to appreciate is, what were the conflicting factors that were coming into Mr Kabe's judgement if, in fact, the Lexcen was closer to him when he was - was at this stage and he didn't feel comfortable with taking the decision to let it go, because he was - didn't have a clear view of - of what was coming and, certainly, to let it go here, with the thought that somebody might be coming, would have been a lot more - - -.

When it was put to Mr Moffat that a head on collision with a vehicle coming in the opposite direction could have occurred, he stated as follows:

"It would have - but it would have been so logical in his mind, that this was the worst of - the second of two evils, to have - to turn into this - into what we know as the site".

He went onto say:

"Well, it's impossible to say what he would have-what clear vision he had. And being in the left-hand drive, that was even more compounded, that even where the - where we think the Lexcen was in the photo, the ability not to be able to see through it".

It was put to the witness whether he was confident that the Lexcen must have been a factor at the 110 to 120 chain mark, whether Mr Kabe had any control or not, because of the closeness of the Lexcen: Mr Moffat's answer was:

"I do believe that".

At page 1050 of the Transcript Mr Moffat gave evidence about the respective roles of driver and navigator. It was put to Mr Moffat that Mr Okano, the navigator, would have been keeping his eye out for the marshal. Mr Moffat agreed. However, Mr Moffat did not quite agree that the driver would not be looking out for the checkpoint. Mr Moffat gave the following evidence:

"I can't quite agree because I do - I do - I believe that the essence of the - of the competition, the rules of the run, were by this stage anyway well and truly rehearsed by all competitors and all drivers knew that in a competitive stage there was a shut-down zone, there was a precise kilometres area, and it is - would be surely prudent to be - start looking for the actual entrance to the control zone."

VEHICLE INSPECTION

The Ferrari was inspected following the accident. No mechanical defects were found to exist on the Ferrari.

EVIDENCE OF THE IDENTITY OF THE DECEASED OCCUPANTS OF THE FERRARI

As stated in Senior Constable Potts' report the driver of the Ferrari (now deceased) was Akihiro Kabe and his passenger, the navigator, (now also deceased) was Takeshi Okano, those conclusions being based upon observations made and information obtained at the scene of the accident.

The identification of each deceased was assisted by the presence of a Cannonball Run competitor card (bearing name and number) around the neck of each deceased.

The identification of the driver and navigator was recorded in the Initial Notifications of Death to the Coroner and in Affidavits of Identification of deceased persons.

THE FORENSIC PATHOLOGICAL EVIDENCE

Exhibit 10 in the coronial proceedings were the Post-Mortem Reports of Dr Kevin Andrew Patrick Lee in relation to each of the four deceased.

In the case of the deceased Akihiro Kabe the cause of death was given as "Blunt Head Injury". Dr Lee made the following comments:

- "1. The only significant injury sustained by the deceased was the one to the right temple.*
- 2. This is consistent with impact into the other occupant of the motor vehicle.*
- 3. This injury would have been minimised by use of a crash helmet.*
- 4. The bruise overlying the right shoulder is consistent with the right shoulder strap of the seat harness.*
- 5. The injury to the right forearm is consistent with impact with the ashtray area of the centre console."*

The cause of death of Takeshi Okano was stated as (1) "Blunt Head Injury" and (2) "Blunt Chest Injury". Dr Lee made these comments:

- "1. The injuries found on the deceased include heavy impact injury against shaped hard objects on the right side, mainly laterally, and a single heavy impact to the left temporal area, corresponding to the injury seen in Akihiro*

Kabe.

2. *The injury to the head would have been minimised by use of a helmet.*
3. *The injury to the chest, although significant, would not normally be expected to cause death in a situation where medical help was rapidly available."*

Dr Lee stated that the cause of the death of Timothy Linklater was "Blunt head injury". He commented as follows:

- "1. The injuries found on the deceased are consistent with his having been heavily impacted a little below knee level in a front to back direction.*
- 2. The head has been very heavily struck from behind causing extensive skull and brain damage.*
- 3. Death would have been both inevitable and instantaneous."*

In the case of the deceased, Keith Allan Pritchard the cause of death was given as "Multiple Injuries". Dr Lee made the following comments:

- "1. The injuries found on the deceased would have been immediately and inevitably fatal.*
- 2. The injuries found on the deceased are consistent with a low speed crushing impact with associated dragging."*

Dr Lee, who was called as a witness at the inquest, concluded that the head injuries sustained by Mr Kabe and Mr Okano could only have been caused by a clash of heads. He stated: "...I did have the opportunity to examine the motor vehicle and satisfied myself that there were no structures within the motor vehicle within that area that could possibly have accounted for their injuries."

Dr Lee was asked his view as to the likely injury to the head of both Mr Kabe and Mr Okano, had they been wearing safety helmets. He stated: "Certainly, the injury that was present to the head would've been minimised by use of a crash helmet and I would regard it as being extremely likely that that would've been an entirely survivable, and in fact, probably a walk-away situation."

**THE INVOLVEMENT AND THE RESPONSIBILITIES OF THE GOVERNMENT OF THE
NORTHERN TERRITORY IN RELATION TO THE CANNONBALL RUN**

DOCUMENTARY EVIDENCE

Various documents were tendered at the inquest in relation to the Government's involvement with the 1994 Cannonball Run.

Without being exhaustive those documents included the following:

- (1) The message from the Chief Minister of the Northern Territory (part of Exhibit 9).*
- (2) The memorandum from the Chief Minister to the Secretary, Department of Chief Minister dated 8/3/93 (Exhibit 24).*
- (3) Minutes of Police Headquarters Meeting (held 7/3/94)*
- (4) Minutes of the meeting held in the Commissioners Conference Room on 12/1/94 (Exhibit 46).*
- (5) Chief Minister's letter dated 10th March 1994 to Cams (Exhibit 63).*
- (6) The Statement of Barry William Chambers (Exhibit 20).*

(1) THE EVIDENCE OF MR BARRY WILLIAM CHAMBERS

Mr Barry William Chambers provided a statement to the Coroner which became Exhibit 20 in the Coronial proceedings.

Mr Chambers, who is presently the Acting Secretary for the Department of Transport and Works, was Deputy Secretary of Department of Transport and Works in early 1993 when the Cannonball Run was being considered. Mr Chambers told the Court that he was a qualified civil engineer and had been employed by the Northern Territory Government since 1981 in a number of different areas, including water supply and public works. He had been employed for the past three and a half years by Transport and Works which includes responsibility for the management and use of the Northern Territory Road Network.

Mr Chambers told the Court that he had been involved in preliminary discussions with the Chief Minister and Allan Moffat regarding the possibility of Mr Moffat organising an event which would be called the Cannonball Run, and that it was subsequently agreed that the Government would commission Allan Moffat Enterprises Pty Ltd to conduct a feasibility study into the holding of such an event in the Northern Territory on public roads. Mr Chambers agreed that it was the Northern Territory Government's intention that the event was to be a self-contained commercial event, and that the Government would provide such support as it could to facilitate the event.

Mr Chambers said that he had played no part in selecting Mr Moffat as an appropriate person to either conduct the feasibility study or to be involved in the organisation of the event. He was, however, aware of Mr Moffat's general reputation in motor sports. He was not aware of the extent to which Mr Moffat had either actually managed or been responsible for the organisation of any event similar to the proposed Cannonball Run.

Mr Chambers said that the feasibility report was obtained in due course in February 1993. The witness was referred to Mr Moffat's experience and expertise which was outlined in the report. The report stated that Mr Moffat had had 25 years experience in promoting and managing successful motor racing teams and drivers, that he had started racing in 1964, and that he had won his first championship in Victoria in 1964. The report went on to say that Mr Moffat throughout his career had won over 25 national and international accolades, including the Australian Touring Car Championship four times, the Monza 500 Championship, Bathurst and class victories at Lemans, Daytona Spa 24 Hour, Fuji 500, and the Sebring 12 hour race.

Mr Chambers was asked whether in a practical working sense he had any knowledge or understanding of what might be involved in such events in an organisational sense. His reply was: "Only to the extent that I've seen those events on television".

The report went on to say that Mr Moffat was a director of CAMS Commercial. Mr Chambers said that he was unaware of the work done by CAMS Commercial. The report also indicated that Mr Moffat was a director of Motor Marketing Australia. Similarly, Mr Chambers was not aware of what Motor Marketing Australia did. Further, the report stated that Mr Moffat was Chairman of Touring Cars International. Likewise,

Mr Chambers did not know what that organisation did. Finally, the report asserted that Mr Moffat was well qualified to lead and advise the team which had worked on the feasibility study.

Mr Chambers agreed that the Government was relying on the feasibility study, and that the author of the document and his expertise were a relevant for evaluating what the study showed.

Mr Chambers said that he believed Cabinet had endorsed the feasibility study. He said that he was not a participant in the Cabinet process of considering the feasibility study. Mr Chambers said that he was never asked to give a specific response to the feasibility study.

He agreed that it was not presented to him as part of his responsibilities in his Department to discuss or evaluate any particular part of the feasibility study so far as it impinged, or might have impinged, on his Department's responsibilities and resources. Mr Chambers said that his involvement was in effect to execute the Government's wish that there should be an event run of the kind which the feasibility study outlined.

Mr Chambers said that in early 1993 the question was whether or not an event was going to be held and whether it was feasible and practical. He agreed that safety and financing were two of many factors to be considered. Other factors included the impact of the Run on appropriate tourist and commercial use of the roads of Northern Territory and the practical availability of accommodation.

Mr Chambers agreed that there was nothing in the feasibility study that indicated that Mr Moffat had any experience with running events similar to the Cannonball Run. However, he said that the Government may have had other information which did not appear in the feasibility study.

Mr Chambers was then referred to that part of the study headed "Event". Mr Chambers agreed that the study emphasised the ability of the Run to leave its participants eager to compete in the next Run, and also the level of media and tourism exposure it would secure for the Territory. The study went on to state as follows:

"The event should not be seen as a race from start to finish. A race would be difficult to control and road safety requirements would be impossible to meet. The event, however, must be of sufficient challenge to competitors in order to fire public imagination and support. This report recommends that during each and every day of the event competitors will enter controlled special sections en route in which they will have the opportunity to gain points. The sections are carefully selected on the grounds of road and safety conditions. A prescribed time will be placed on completing the section by Allan Moffat and his team. The set time will not exactly be a fast time but competitors must meet it exactly to the second to gain maximum points. This would be a significant challenge to drivers and navigators".

The report then went on to refer to the Flying Mile Challenge which would be a test on closed roads with safety barriers and safety controllers.

Mr Chambers understood that the competitive sections of the Run were going to be run with coincident ordinary traffic. He agreed that the document did not say anything about the kinds of speed envisaged by the organisers.

Mr Chambers was then referred to that part of the report which addressed CAMS' involvement. It was said to be imperative that the Cannonball Run was sanctioned by CAMS. It was Mr Chambers' understanding that CAMS would sanction the event. He understood that from the time he first read the study. As to CAMS' sanctioning of the event Mr Chambers gave the following evidence:

"Well, I was aware it wasn't a legal requirement and I guess my knowledge of CAMS at that stage was really just in the broadest sense, about a body involved with motor sport in Australia. So it was the organiser's assertion, not mine".

Mr Chambers told the Court that Government would have relied on the feasibility study as one of the factors for approving the staging of the event.

Mr Chambers told the Court that in March 1993 he was appointed chairman of a Government Steering Committee, established at the direction of the Chief Minister, to co-ordinate the Government's provision of support to the organisers of the event. Mr Bernie Phillips, who was then manager/transport secretary of the Department of Transport and Works, was appointed secretary of the committee. The other members of the committee were drawn from the Chief Minister's Department, the Northern Territory Police and Emergency Services, the Northern Territory Tourist Commission, the Department of Sport and Recreation and the Department of Law. Mr Chambers said that the function of the committee was to identify and co-ordinate the support roles of relevant departments, and establish a liaison between those departments and the organisers. The committee had no executive powers and had no part in the organisation of the structural programming of the event; however, it did have input by way of reviewing the proposals of the organisers, to ensure that they could be implemented with the minimum of disruption to the public. Mr Chambers was asked whether any review of the proposals of the organisers would take in the actual rules that governed the way in which the Run was to be undertaken. Mr Chambers' evidence was:

"Only where we felt those rules might have an effect on the general travelling public, not as they affected competitors".

He elaborated as follows:

"Well, only in as far as the rules and extension of them would have an impact on the general travelling public. We were not there to determine whether they were good rules for competitors in a motor sport event. We had no expertise in that area as motor sports organisers. We restricted our view as to how this would fit in with the general day to day life in the Northern Territory I guess".

Mr Chambers told the Court that it was not a matter for the committee to consider whether flying finishes as opposed to stop finishes should be adopted by the Run. Mr Chambers said that on such matters the committee relied on Mr Moffat or his organisation.

It was then put to Mr Chambers whether the committee was concerned with the speeds at which competitors would travel in the competitive sections of the Run. Mr Chambers' evidence was as follows:

"No, we didn't see that as a matter specifically for the committee as whole to consider. But the matter was raised with ourselves and with the police and bilateral meetings between those departments".

Mr Chambers was then asked whether he had personally available to him the proposed speeds or average speeds or average maximum speeds to be achieved in the Run. His evidence was as follows:

"I was aware only in the general sense of the order of magnitudes being talked about, but nobody was aware of the setting of the speed on each section until that day and that was determined by the event organisers. So there were no specific proposals put to us, that on any one of the sections, months in advance what the speed would be".

He went on to say that speeds had been discussed with the police. As to what speeds he was personally aware of, Mr Chambers said:

"I think the discussions with police at a meeting which I didn't attend, which I subsequently saw the minutes of, averages of 160, 170 were talked about with maximums of 220".

Mr Chambers said that he did not have a strong personal view one way or the other about the envisaged speeds. He said: "Those sorts of speeds are quite common on the Northern Territory roads". It was then put to Mr Chambers that those sorts of speeds were not common in terms of competition on Northern Territory road, that is part of a competition involving what was expected to be in excess of 100 vehicles. Mr Chambers gave the following evidence:

"Well, there was no such previous competition held in the Territory, so, not of a Cannonball type. There may have been other rallies within the Northern

Territory that I'm not aware of that may have involved those speeds on the highways. Because those speeds are not illegal in the Northern Territory and therefore they are not a matter of direct concern to us in the normal departmental role".

He agreed, however, that they were illegal if in the circumstances they were dangerous.

It was then put to Mr Chambers whether the sorts of speeds envisaged should be evaluated to see whether or not they were safe. His reply was as follows:

"I guess, in the broader sense, we evaluated against our own knowledge of the Northern Territory roads, the condition of the roads, the traffic volumes on the roads: they've very lightly trafficked roads. We evaluated against what was normal community standards in the Northern Territory. I mean, there are probably many people in this room who have been sitting on 160 kilometres per hour on that highway and have been passed. I myself have. It is not an uncommon event in the Northern Territory for people to be cruising continuously at 160 kilometres an hour and more. So to that extent we were making a judgment based on normal practice within the normal Northern Territory road environment".

As to speeds of 200 kilometres per hour or in excess thereof, Mr Chambers said:

"Once we got to talking about speeds of that, I guess we became reliant on the expertise of the, the event organisers and those of the police who were consulted, in the general sense, about speeds of that level".

It was then put to Mr Chambers whether average speeds of 170 to a maximum speed of 220 ought to have required a more detailed evaluation than simply applying one's own personal experience of driving conditions in the Northern Territory. Mr Chambers evidence was as follows:

"I think, in applying - in making that judgment, I would have been guided by a number of factors, including personal knowledge, knowledge of other

people within our department, in terms of engineers and other road engineers, my knowledge of the traffic conditions, I guess my broader knowledge of the road safety environment in the Northern Territory, I guess that my understanding that in this particular event the vehicles that would be running it would generally thought to be at the upper level and that those in vehicles would be expected to be safe on the roads. So in making a judgment about that you take in a whole range of factors".

It was then put to Mr Chambers whether at any stage the committee took all of those factors into account in a formal sense in considering whether the speeds envisaged were safe and appropriate. Mr Chambers said: "The committee did not consider that as a broad issue". It was then put to Mr Chambers whether he had undertaken that exercise in his position as Deputy Secretary, Department of Transport and Works. His evidence was this:

"No, I took the view in that the committee's role, and my role, was to ensure that the event organisers were talking to the relevant people because in Government - I don't know - I might have to digress a second - but the - the - the - under the Public Sector Management Act the Chief Executive of each department is responsible and accountable for the operation of his or her department. So it was not my role, as one member of the committee or even as chairman of the committee, to direct how other departmental heads should approach a particular issue, whether it be the Cannonball or any other issue. The role of the committee was there to ensure that there was a broader understanding amongst those senior officials from other departments about the role the Government expected that department to play in facilitating the event and that where there were specific issues that the event organisers and the relevant line department were in contact with each other and dealing with that issue".

Mr Chambers was saying, in effect, that the question of speed was therefore not a question that concerned the Department of Transport and Works. Mr Chambers was then asked whether any department or body of Government was concerned with the question of speed in terms of safety. Mr Chambers' reply was as follows:

"In terms of safety I guess the police would have been the lead department concerned and therefore we ensured that the police and the organisers met on a number of occasions to resolve not only the speed issue, because the speed was not treated in isolation from a whole range of issues we were dealing with, in terms of the structure of the event, and no real view could be formed about speed until one had looked at all of the other factors that surrounded the event".

Mr Chambers went on to say:

"Well, I was just going to say the factors such as whether side roads would or wouldn't be closed, the nature of the highway in any particular area. You just cannot deal with that as a single absolute issue and say, 'at one point in time we focused on any single maximum or any single average', because we always knew it would be variable, depending on the circumstances".

However, Mr Chambers agreed that speed was one of the relevant parameters of safety. Mr Chambers did not necessarily agree with the proposition that as speed increases prima facie risks increase, that is the risk of danger increases. He said he would not agree that as speed increases risks of danger increase because it would depend on what vehicle one was travelling in. He added that speed was one of many factors in any accident or dangerous situation. It was then put to Mr Chambers that if speed is one of the factors then as speed increases its relevance as a factor also increases. Mr Chambers said:

"Depending on what situations you envisage. If you're talking about an impact, obviously the higher the speed, the higher the momentum, the impact on people will be different".

Mr Chambers then gave the following evidence:

"I consider that we need to look at the context of that speed in the environment of an event that was being structured, the number of vehicles in the event and how that might be managed, to determine whether that risk

was appreciably more than any other normal road condition".

Mr Chambers said that he was never made aware of the average speeds the various categories of vehicles participating in the Cannonball Run would have to achieve.

Mr Chambers appeared to agree that potential average speeds in excess of 200 kilometres per hour would need to be factored into all other relevant matters, for example road and traffic conditions.

Mr Chambers said that it was not the committee's role to obtain information about the potential average speeds of vehicles participating in the Cannonball Run.

It was then put to Mr Chambers whether he saw it as the committee's role to critically evaluate the mode of operation of the Run in terms of safety, and then to involve itself in adjusting any relevant parameters to ensure safety, as distinct from making the Run as organised as safe as could be. His evidence was as follows:

"I don't think we undertook a critical review in the context that you refer to, but we reviewed the overall proposal to determine what factors we might take into account in determining how we responded in accordance with the Government's wish that Government departments facilitate the event, so from the Department of Transport and Works' viewpoint, which was the road authority, then we needed to have a broad understanding that in that context the difference between 170 or 200 or 220, I suggest, would have had little impact on the decisions we ultimately made".

Mr Chambers said that there was no formally structured evaluation which resulted in a report relating to the safety aspects of speed. It was then put to Mr Chambers whether there was any informally structured evaluation as to the parameters of the Run so far as they impinged upon safety. His response was:

"To the extent that the meetings we had with the organisers, the police, discussions amongst ourselves, was an informal evaluation, the answer was, yes, we did have an evaluation".

It was put to Mr Chambers that one of the relevant factors for evaluation would have been the expected use of the road by members of the public during the running of the event. He replied:

"That's correct. I've said earlier we were quite conscious of the fact that tourism coaches are heavy uses on schedules. The road transport industry, which the Territory is heavily reliant on for freight, is also a frequent road user".

Mr Chambers was asked whether he had actual information as to the schedules and expected schedules of commercial users of Northern Territory road, for example road transport, buses and tourists, etc, and whether or not those schedules were factored into the running of the Cannonball Run in terms of times, places and speeds. He gave the following evidence:

"We didn't have detailed schedules because there are literally hundreds of those. What we did, we talked to the relevant industry associations, which is the way Government normally does business with the group. Now, in the Territory there's a Road Transport Association, a peak group of the major trucking companies, and we had discussions with them about the possible impact of the event on their operations. Similarly, the Bus and Coach Association were actually invited to the briefing in February 1993 for that very specific purpose".

Mr Chambers went on to say that they were asked what was the impact of the Run on their operations. As to what the impact of their operations on the Run would be, and whether or not that was considered by Mr Chambers, Mr Chambers said:

"Well, that was a consideration in terms of the fact we knew there would possibly be trucks on the road, there would be buses on the road and cars on the road".

It was then put to Mr Chambers how many trucks were going to be on the road between say Alice Springs and Stuart Well between 9 and 11 am on day 3 of the Cannonball Run.

His evidence was as follows:

"I couldn't tell you that. But what we did do was, ensure that the trucking industry made all of its members aware the Run would be there, to minimise the number of those who would be there who may be held up".

Mr Chambers was then further questioned as to the extent which either himself or the committee had considered the impact upon the Run of the presence of other vehicles on the road in a way which was more informed than merely a general awareness of the possibility that there were going to be other vehicles on the road at the relevant time. He gave the following evidence:

"We are aware that in certain - we have traffic counts. My recollection would be that in some of the remote areas of the Stuart Highway you can have as little as 10 vehicles per hour sometimes around 20. We were aware of those and conscious of those because they are our daily bread and butter. I mean that - that is what we deal in".

Mr Chambers went on to give the following evidence:

"Well again I'm not trying to be difficult but on any one day I cannot know in advance how many trucks or buses will use a specific route".

Mr Chambers said that he had inquired from peak bodies as to the expected use by their members on the days the Cannonball Run was to be conducted. He said: "We did inquire. We talked to them". As to whether they gave a specific indication of the number of vehicles to be expected on the Stuart Highway at relevant positions, Mr Chambers' evidence was: "I can't recall on giving a specific number, no". It was then put to Mr Chambers whether specific numbers were sought. Mr Chambers' evidence was: "If the specific numbers were - were available, they probably would have given them to us". Mr Chambers then admitted that he did not specifically ask for numbers, however, he did say that other officers of his department may well have asked for the numbers. He added: "I didn't attend every meeting".

It was then put to Mr Chambers whether he regarded it as part of the function of his department to evaluate the possible safety implications of trucks and buses on the road at the places and times of the proposed competitive runs. He stated:

"I think - I mean, I have to qualify that, the answer to that, and the extent that the run, as proposed, was being carried out within the laws of the Northern Territory and therefore any particular vehicle driving on the road would be faced with the same situation that many other motorists in the Territory face every day. That is, there are people passing road trains and buses every day at speed some at greater speed than others. So that that extent, if you looked at any individual vehicle in the Cannonball Run, it was doing no more or less than many other vehicles do every day. So to that extent there was nothing specifically to evaluate because that is the normal road situation".

Mr Chambers accepted that it was envisaged that category 1 cars would be averaging speeds of close to 200 kph, but he added:

"But were also aware that the event would be run in a manner where the vehicles involved, having radio communication between themselves, there were side roads to be closed, there was aerial surveillance, so in making that assessment you have to look at all the factors and that's what we did, because we had knowledge of the broader context in which the event would be held."

Mr Chambers said that he could not recall anyone at any meeting of the Steering Committee expressing any doubts about the Run, or about the safety of the Run being run at the envisaged or proposed speeds. He gave the following evidence:

"Outside of those meetings the issues of safety and speed were discussed but nobody raised it with me, in terms of being a problem in their mind that could not be addressed."

He added:

"Well, in the context of the broader precautions that I was talking about, the closing of side roads, placing of additional signage on the road, replaced additional line marking, a number of those were decisions we made in the context of people sort of saying, "Well, in this area there are a few curves, maybe we do need a few extra signs", and, and in fact, I recall it was the event organisers that suggested some of those improvements with safety in mind and we adopted those."

Mr Chambers was aware that CAMS had expressed some concerns about the safety aspects of the event. When asked when he first became aware of correspondence from CAMS he said:

"Probably a day after they were received, if we're talking about the March letter in particular."

Mr Chambers said that he did not become aware of the letter of 9th December 1993 until later in January, as he was overseas for December and the earlier part of January. Mr Chambers said that by the time he came to look at a response to CAMS' March letter he was aware of the general terms of the earlier letter.

Mr Chambers agreed that CAMS had concerns about the safety aspects of the Run. Mr Chambers was then asked as to the extent to which he was informed about the detail of those concerns. He gave the following evidence:

"I guess I was aware of the broad concern they had, but whilst agreeing with the event in principle they were comfortable, I guess, with that idea. It seemed to me that they were struggling a bit with it in terms that it didn't fit a normal CAMS event but the organisers were dealing with them on those issues and the - but the principal issue, other than the logistical type - and there were a myriad of those which you probably don't want to go, because I guess for all of us the principal issue, as they outlined and as I understood it was the issue of the competitive sections."

It was then put to Mr Chambers whether he was aware that CAMS were worried about the speeds that were to be achieved in the Run. His reply was as follows:

"I'm not sure that it was put to me that they were worried. It was put to me that Race Cage were dealing with CAMS about those issues of the competitive sections and that they had still not resolved that matter."

Mr Chambers stated that at no time did he request to have a look at what CAMS specifically said. He gave the following reason:

"Consistent with what I've said earlier about the responsibilities for various people under the event, it was our belief that it was clearly the role of Race Cage to meet the requirements that they had outlined to the government in the feasibility study. To that extent I was comforted by the fact that they were still talking and still negotiating and I have great faith in people when they are talking and negotiating because usually they get to an end point."

Mr Chambers added:

"And by January the fact that it was not resolved was not a matter of grave concern because I knew they were still talking to CAMS about the event."

Mr Chambers considered that by January 1994 the proposed event had got to the point where it was going to go ahead.

It was put to Mr Chambers that the skill, expertise and experience that CAMS brought to the exercise involving in particular the evaluation of speed, was not looked at as a separate matter of significance in itself. He said:

"Not as a separate matter but as one of, as I've said before, in the totality of the arrangements."

Mr Chambers agreed that speed was one of the relevant parameters of safety and that safety was a relevant parameter in the general context of organising the event.

As to the likely input that CAMS could have had in the evaluation of safety and speed aspects, Mr Chambers gave the following evidence:

"I think we took the view that we had adequate resources to do what was necessary from our viewpoint without asking CAMS to become involved as a resource."

He qualified his evidence in the following way:

"Knowing in the context on the basis that they were dealing with Race Cage."

It was put to Mr Chambers whether he was aware in January the fact that detailed planning was still in a state of flux was a matter of concern on the part of the CAMS' National Safety Committee. Mr Chambers' reply was as follows:

"I can't recall being specifically aware of that, but if I had been made aware of that observation, I probably would have challenged it, because I was aware very much of the detailed planning that had gone on even as at December, January, February. As I said it was an evolutionary process."

Mr Chambers added:

"But to say there was a concern at the lack of detailed planning, I think, perhaps a perception that CAMS may have had, but was certainly not one that we had."

At page 555 of the transcript, Mr Chambers was of the view that CAMS' major concern with the speed at which competitors would be travelling was purely their viewpoint. When it was put to Mr Chambers whether or not they were adopting a reasonable point of view, Mr Chambers gave the following evidence:

"I don't want to put a reasonableness on CAMS, which I have no knowledge of. I - I don't know if they are a reasonable organisation or reasonable people. I've never met any of them."

Mr Chambers then added that there was always the possibility that CAMS were being unreasonable.

In the context of CAMS' general concerns, Mr Chambers conceded that he had no relevant experience with an event like the proposed Cannonball Run. However, he added:

"But I had an in-depth knowledge at that stage of the nature of the event and the precautions that were being adopted by Race Cage in terms of it not being a race; it was a run. That was made abundantly clear from the time of the feasibility study through every discussion I ever had with Race Cage or any other associated groups."

Mr Chambers said that the Northern Territory Government accepted the proposal by Race Cage to get CAMS involved, but it was not a legal requirement to have CAMS involved.

Mr Chambers agreed that in relation to the competitive stages, CAMS original position was that the roads should be closed to the public and there should be a maximum average speed of 130 kph.

When it was put to Mr Chambers that CAMS had expertise in the relevant area, he gave the following evidence:

"Only to the extent that my understanding is that CAMS is a peak organisation of motor sports associations. One would expect they have some knowledge. However when one reads a competitive stage where speeds are not greater than 130 kph one would have to wonder a little bit about whether they were talking about an event where the cars get out of second gear."

Mr Chambers added:

"What that is saying, at a maximum average speed of 130, would reflect a very - the usage of the road by a very large number of Territorians on a day to day basis. So to that extent you might conclude, if you were moving in that direction, that we have a Cannonball Run every day, if it was run under this regime."

It was once again put to Mr Chambers whether he agreed that CAMS had expertise in relation to the running of competitive motor events on the road. Mr Chambers' reply was:

"I would hope that they do."

He then went on to say:

"I would expect, in the situation they hold themselves out in, that they would have the expertise they say they do."

Mr Chambers said that he knew of no reason whatsoever to suggest that they did not have the relevant expertise.

Mr Chambers was of the opinion that the letter of 9 December 1993 from CAMS should not have been brought to his attention. Similarly, he did not think that at that time that it should have been brought to the attention of any governmental organisation. It was then put to Mr Chambers whether the letter should have been brought to the attention of police who were concerned with issues of safety. Mr Chambers gave the following evidence:

"I think, if you look at it in the context, it was a letter written a week or two after some early meeting with CAMS and Race Cage. I don't think it was a matter that they should have been brought to the attention of anyone other than themselves."

Mr Chambers was then referred to a letter dated 23 February 1994 which was a letter from CAMS directed to Mr Moffat. Mr Chambers said that he had not seen the letter. He was asked whether he had ever been made aware of its contents. He said:

"Only in the sense that the letter indicates that there were continuing negotiations and discussions going on; I was aware of that."

The said letter continued to express concerns on the behalf of CAMS as to the safety and speed aspects of the proposed Run. It was put to Mr Chambers that had he been aware of the letter would he have questioned further the organisers as to the safety and speed aspects of the Run. Mr Chambers said:

"No I don't think I would have questioned them further because we were dealing in the context of all the other safeguards that we were developing."

It was put to Mr Chambers whether given the concerns of CAMS the sensible thing was to take up CAMS' concerns with Mr Moffat. Mr Chambers' evidence was as follows:

"I don't accept your proposition. My discussions with the Race Cage organisers were as I have said, that they were continuing to negotiate with CAMS and they led me to believe that they could negotiate these matters. Now, I have been involved in many negotiations and if people believe they can negotiate something then I believe that they can negotiate it. So whether I saw these letters or not, I would never have seen them an absolute. I mean, I've negotiated claims from contractors that said absolutely "this is our last offer" but we still settle."

Mr Chambers then added to his evidence in the following way:

"If I had had the letter I would have taken it up with Race Cage, but I'm sure the discussion we would have had would have been similar to what we had without having the letter and that is that the matters were to be resolved with CAMS."

Mr Chambers was clearly of the view that it was the organiser's job to negotiate with CAMS and work things out.

It was then put to Mr Chambers that he did not see himself as having any responsibility whatsoever for coming to any independent view or at least making independent enquiries about whether the CAMS view, which differed so markedly from that of the organisers, was a valid one. Mr Chambers replied as follows:

"I believe some elements of what they were saying was not valid."

Mr Chambers said that he had been aware of the letter dated 3 March 1994 from CAMS. He said that that letter had been referred to him from the Department of Law, and that he was asked to cooperate in the drafting of a reply to that letter. He said that he did not draft the reply, but believed he probably saw the final draft. Mr Chambers was then

shown a draft of the reply, and was asked whether that draft had initiated from him, or from the Department of Law for him to peruse. Mr Chambers gave the following evidence:

"I know what you're getting at. Yes, I suspect that this was probably a draft we did to send to the Department of Law who would then have done their part of the draft. They may have sent us a draft but it's not on the file it's - correspondence go backwards and forwards sometimes with drafts, bits of paper go all the time, but this was a draft we had, yes."

Mr Chambers thought that the purpose of the draft was to answer the letter that CAMS wrote seeking assurances. Mr Chambers said that the letter was addressed to the Chief Minister and it would be normal practice that the Chief Minister would reply.

Mr Chambers was then asked whether he had been asked for his views or to obtain views from relevant and informed people about the specific aspects of the event raised by the letter. Mr Chambers said:

"I was not specifically asked in those terms, no."

When asked whether he had been asked in any terms, he replied:

"I can't recall that."

Mr Chambers said that as at 3 March 1994 it would have been very difficult to cancel the event but he said:

"I can't say that there was no question. That's very absolute."

In effect he was saying that it was highly unlikely that the event would be cancelled at that stage. Mr Chambers said that he was further aware that as at March 1994 CAMS were continuing negotiations with the Moffat organisation.

It was then put to Mr Chambers that he was unaware of any attention being given specifically by the relevant government organisations to the particular concerns raised in

the CAMS letter, in order to advise the government about them. Mr Chambers said:

"No, there was no specific advice to government but the response asked, in fact, if CAMS wished further information and had specifically named me as the contact, which would be normal, in a way, of trying to help facilitate a resolution."

When it was put to Mr Chambers that the March letter from CAMS sounded a warning bell, Mr Chambers said:

"No, I - all I could agree is, that they sought some assurances that were given."

However, he also agreed that the letter expressed some concerns about safety. He said:

"They are a group expressing some concerns."

Mr Chambers agreed that CAMS were a group separate from the event.

It was then put to Mr Chambers whether he believed that it would be appropriate to disregard the warnings that were sounded in CAMS letter. Mr Chambers gave the following evidence:

"We didn't disregard the contents of the CAMS letter to the extent that we were continuing to talk to Race Cage about resolving the issue with CAMS."

Mr Chambers was then asked how he took up the particular issues of safety referred to in the CAMS letter. His evidence was as follows:

"Those matters were nothing new. Those issues had been the issues of discussion from the time of the feasibility study. They - CAMS had come up with nothing new. They were issues that were the subject of ongoing consideration between the government and Race Cage, in terms of what precautions were necessary, what the structure of the event would be, to the extent that ourselves - and no doubt the government, because I presume the fact that the Chief Minister signed the letter indicated his satisfaction that the issues had been and were being

satisfactorily addressed in that they were not concluded, because there was no absolute determination or lock in of a daily event structure as at 8 March. I venture to say that even a week before the event, it might have involved a lot of typing, but things could have been changed if that had been necessary to accommodate a CAMS request that had been reached."

Mr Chambers agreed that it was not within the scope of his designated responsibility to be informed of the course of negotiations between CAMS and Race Cage nor to participate in the negotiation process. He said:

"That's correct. The result was important not the process."

Mr Chambers said that on the basis of anecdotal evidence received by the Department of Transport and Works, motorists in the Northern Territory average in excess of 160 or 170 kph on some stretches of the highway. As to whether there was any hard evidence as to what speeds are usually found, Mr Chambers gave the following evidence:

"We do on occasions measure speed distribution on the highways to determine what we call the 80 percentile speed, and what that means is, that's the speed at which - whichever way you look at it - 85% of people travel less than, and that's taken from roadside observation. I think that those studies in the Northern Territory - and I believe in South Australia, where there is a posted limit - in similar conditions produce similar results, and that speed is in the order of 125 to 130 kph."

It was put to Mr Chambers that as a statistical matter about 85% of people tend to travel no faster than 125 to 130 on the Stuart Highway. Mr Chambers' evidence was as follows:

"That's of measured vehicles. So that would include - a vehicle is measured, so it would include trucks, so at the lower end. Obviously, we don't have trucks doing that sort of speed. So at the lower end the distribution includes the percentage of trucks and buses, commercial vehicles."

It was suggested to Mr Chambers that about 15% are doing somewhat higher than 125-135 kph. Mr Chambers said:

"I cannot be specific about what data is in those studies, which might indicate what the speeds -"

It was then put to Mr Chambers that the letter of 3 March posed an obstacle to get over rather than information to take on board. Mr Chambers said:

"I guess I would have put it as an issue to be resolved rather than an obstacle to get over, but otherwise what you say is correct."

It was suggested to Mr Chambers that the issue to be resolved was whether or not CAMS could be induced to sanction the event. Mr Chambers said:

"It was whether CAMS could be persuaded, in the light of whatever submissions might be made, to give a permit to the event."

Mr Chambers was asked whether he had discussed the contents of the letter of 3 March with any other members of the committee. His reply was as follows:

"Other than people from the Department of Law who were members of the committee. I can't recall."

He was then asked whether he had brought the letter to the attention of Mr Goedegebuurre. Mr Chambers said:

"I can't specifically recall doing that."

Nor did Mr Chambers have any knowledge of the letter written in response being brought to Mr Goedegebuurre's attention. He certainly did not bring it to Mr Goedegebuurre's attention.

Mr Chambers told the court that documents in the nature of the rules, procedures and

regulations relating to the Cannonball Run were principally provided for the purposes of information rather than for the purposes of evaluation.

Mr Chambers agreed that following the Run there were a number of responses and indeed a document headed "Some Ideas for Improving the Event" was prepared. Mr Chambers said that he had participated in the preparation of that document. Amongst other things the document referred to speed as a critical public safety issue which must be realistically addressed in future planning in a manner which does not detract from the excitement of the Cannonball Run. Mr Chambers agreed that that particular statement highlighted the tension between issues of safety and the excitement generated by the Cannonball Run. Mr Chambers did not appear to agree with the proposition that the tension had to be resolved by a responsible body having the relevant expertise. Mr Chambers appears to have agreed that in future the tension between the two aspects of the Cannonball Run might possibly have to be resolved in a different way to the way it had been resolved initially. He was then asked whether any work had been done towards determining the way in which the tension may be resolved. Mr Chambers said:

"Other than as outlined in this report, we had a few very preliminary ideas about ways - or some ways in which that may be addressed."

As to the assessment or evaluation of the skills of drivers participating in the Cannonball Run, Mr Chambers gave the following evidence:

"Well, we were under the impression that Race Cage were evaluating, in a manner appropriate to their experience, the skills of drivers and that there was a - a guess in place the possibility of a selection process which could exclude people from the event if they felt they were unqualified. But we attempted to make no judgment whatsoever about that."

Mr Chambers agreed that there was a link between safety and speed on the one hand and whether a road was closed or not. He agreed that they were related issues. Mr Chambers also agreed that the suggested diversions or alternatives proposed on page 11 of the document might come into play in evaluating the tension between safety and excitement. Mr Chambers added:

"It will be one of the issues we would need to resolve if another event was contemplated."

Mr Chambers was again referred to the observation in the document that "speed is a critical safety issue which must be realistically addressed in future planning, in a manner that does not detract from the excitement of the Cannonball". It was then put to Mr Chambers that that statement seemed to necessarily imply that there would have to be a full evaluation of the speeds actually undertaken by the vehicles in the Cannonball Run of the roads and the conditions. Mr Chambers' response was as follows:

"In the context - if another event was proposed? Oh I think that's fair to say, yes, that we would look at all of the information we had and the whole running of the event yes."

Mr Chambers was then asked if that would be something that government would do. Mr Chambers said:

"In conjunction with any promoter of an event of this type."

It was put to Mr Chambers that government had abdicated its responsibility in relation to the issue of speed, insofar as it impinged upon safety, to Race Cage, and did not take on the responsibility of itself evaluating the speed and safety issues, and attempting to resolve those issues by either negotiation or, in the end, making an informed determination on the question. Mr Chambers said:

"Well you have put it and I disagree with it."

The following evidence was elicited from the witness during cross-examination.

Mr Chambers was asked whether there was any formal agreement between the government and the organisers of the Cannonball Run. Mr Chambers said:

"I think the government had written to Race Cage advising them that they supported the event. There were letters in relation to the feasibility study, that was

prior to this. I am not aware of any specific agreement of the type you might envisage. I think it was by correspondence to the directors of Race Cage, indicating the Territory government supported the event."

Mr Chambers added that he was not aware that the matter was handled other than by correspondence. Mr Chambers told the Court that he thought that the Chief Minister made a commitment that the government would lend its full support to the Cannonball Run. He added:

"And through the Steering Committee that he appointed, under my Chairmanship, that was the mechanism by which he delivered that commitment."

It was put to Mr Chambers whether at any stage he had asked the Chief Minister or the Secretary of his Department precisely what arrangements had been made between the government and the organisers of the Cannonball Run. Mr Chambers said:

"I don't think I needed to ask the question because the documentation provided to me, enabled me to do what I was asked to do."

Mr Chambers added that the answer to the question put to him was no.

Mr Chambers was referred to that part of his statement to the Coroner where he said he believed Cabinet had endorsed the feasibility study. He was then asked whether there was anything in writing that referred to any Cabinet decision to endorse the feasibility study. Mr Chambers said:

"I'm not privy to all Cabinet documents; I can't answer that."

As to the basis of his belief, Mr Chambers said:

"Not on seeing documents, but it's on a belief that the Chief Minister had endorsed the event."

Mr Chambers was then asked as to the manner in which the Steering Committee operated.

His evidence was as follows:

"It was a bit of a focal point for papers coming to us about the event, but not all papers relating to the event would have come to us. For instance, individual departments, as I explained earlier, had specific responsibilities that they fulfil on a day to day basis, so that departments who were dealing with Race Cage on any number of issues may have been writing to them, but without necessarily - and vice versa - without us necessarily getting back copies. So our role as the secretariat was not to be a complete collection point for every bit of paper relating to the Cannonball. It was a role of being aware of issues that were arising. If they weren't being resolved between the department and Race Cage, I would become aware of them. If I couldn't resolve them, I had the option to go to the government to resolve them. I'm glad to say that I can't think of any specific issue I had to go to government to resolve."

It was then put to Mr Chambers whether in the ordinary course he would expect that in his position as Chairman of the Steering Committee, and as the Acting Secretary of the Department of Transport and Works, that the minutes of 12 January 1994 (which related to envisaged speeds to be achieved during the Cannonball Run) would have been made available to the committee. Mr Chambers' response was as follows:

"If they were relevant to our role, yes."

It was put to Mr Chambers whether he was regarded as the conduit pipe for any concerns that might have arisen from other government departments or agencies concerning any safety issues during the period leading up to the Cannonball Run. Mr Chambers said:

"I believe so. I think they all would have recognised my nomination as Chairman of that steering committee by the Chief Minister would have meant in their minds that I was a person they should have contacted."

It was then put to Mr Chambers whether there were any complaints or concerns directed to him during the relevant period. Mr Chambers stated:

"Not of a serious nature or a substantial nature. I mean, there are obviously a lot of little issues that came up and you sort of said, "Well what's the background for that? Had they thought of this? Have you thought of that?" Direct them back off again to either talk to Race Cage or another department."

Mr Chambers was then asked whether there were any concerns that he himself had relayed to Race Cage. His evidence was as follows:

"No. I didn't relay any of those concerns - excuse me - to Race Cage, because none had been brought to my attention."

Mr Chambers gave the following evidence as to his assessment of Mr Moffat:

"I guess I formed a view - I never met Alan Moffat before this event. I don't think I met him until that first meeting with Chief Minister. I guess I reserved judgment until I saw how he performed. Over the following months, I guess I came to realise that he was putting enormous effort into this, that he was very conscious of the need for safety, and I had absolutely no hesitation in saying that in most of the discussions we had about the event, that the safety issues were there all of the time, either as an up-front issue or an underlying issue. I never had the feeling that he would compromise on those in his mind. He recognised, I guess - and this is where it links in with the other issues of the event in terms of its commercial nature and a tourism nature - that if the event was not safe, its ongoing likelihood would be diminished, and that those issues were not inconsistent with each other, that commercial success and safety were really matters that went hand in hand. So therefore, I had no feeling whatsoever that he wasn't paying full attention to safety matters."

Mr Chambers told the Court that the letter of 3 March 1994 from CAMS to the Chief Minister had been brought to his attention as Chairman of the Committee. He added:

"And that attention was in fact brought by the Department of Law who were also a member of the Committee."

Mr Chambers added that the letter of 3 March 1994 had been brought to his attention as Chairman of the Steering Committee by the Department of Law. Mr Chambers said that he did not recall having consulted other members of the Committee on the draft response to the letter.

Mr Chambers gave the following evidence as to the nature and regularity of the meetings held by the Steering Committee:

"I think there were four meetings that were actually called Steering Committee meetings, but some of them - I think two were held while I was away. If they were meetings that were only really traversing old ground and just bringing people up to date, there may have been no actual minutes of such. I think the first two were minuted, or records were kept."

It was then put to Mr Chambers if there were no minutes of some of the meetings that would indicate that there was nothing worthy of minuting at those meetings. Mr Chambers said:

"Perhaps nothing that wasn't already being addressed by people in their own right. Which might have meant that there was no need to minute what people were already doing."

It was finally put to him that there were no new matters essentially. Mr Chambers' reply was:

"Yeah, no new matters, I expect."

*(2) THE EVIDENCE OF DEPUTY COMMISSIONER OF POLICE WILLIAM LEENDERT
GOEDEGEBUURRE*

Mr Goedegebuurre, now retired, was formerly Deputy Commissioner of Police. He told the Court that in that capacity as Deputy Commissioner of Police, he was on a committee chaired by Mr Chambers of the Department of Transport and Works. That committee was set up in connection with the Cannonball Run event.

Mr Goedegebuurre was asked as to his view as to the function or purpose of the committee. He stated:

"The purpose of the committee was to make the Run - the Cannonball Run happen and our duty was to look at our resources to see if we could cope with such an event."

Mr Goedegebuurre went on to agree that the committee was in effect told to cope with such an event, and to ensure that the event occurred as safely as possible. He told the Court that he was not himself personally given the job of evaluating whether or not the Run should occur. Nor did the committee consider whether or not the Run should occur. It only considered how it might occur.

Mr Goedegebuurre told the Court that the committee did not have a say as to the number of vehicles which would be involved in the event, nor did it have a say as to the speeds at which the vehicles were to run. The committee did not have a say as to the level of experience that participants in the Run should have. Nor did the committee have a say as to the processes of scrutineering either the vehicles or competitors. Mr Goedegebuurre told the Court that the committee did not determine the actual course of the Run. In short, the committee was not asked to evaluate any of those matters. However, he added:

"The only thing the committee was asked to look at was as to the flying mile positions in relation to safety."

Mr Goedegebuurre was asked whether the committee had any view about speeds. He said:

"Yes, most certainly, and that the speed be controlled by the time factors set down by the organisers."

Mr Goedegebuurre said that it was expected the speeds would be higher than usual in the Northern Territory more or less. However, he said that he was not informed of the speeds at which the vehicles were expected to go.

Mr Goedegebuurre said that the committee did not seek to be informed about what the actual time limits were for the special sections. It was then put to Mr Goedegebuurre that in order to assess safety, knowledge of the speeds at which it was expected the vehicles would go was significant information. He replied as follows:

"Well, yes, I guess it would be, however, when the committee first started meeting there was no knowledge of the vehicles or people entering."

He, in effect, agreed that the speeds at which the vehicles would be travelling was then a highly speculative matter.

Mr Goedegebuurre said that he did not believe that the issue of speed was raised with either Mr McVean, Mr Fraser or Mr Moffat. He agreed that in relation to speed the committee's attitude was that this was a matter for the organisers.

It was then put to Mr Goedegebuurre that the job of the committee was to see how the various government agencies could assist in seeing that the Run was officially organised, from the government's point of view. He gave the following evidence:

"Efficiently and as safely as possible, yes."

It was also put to Mr Goedegebuurre that the task that the committee was left with was to cope with what the organisers thought was necessary for the Run. Mr Goedegebuurre said:

"In a sense, yes."

Mr Goedegebuurre said that the committee relied on the professionalism of the organisers of the event. It was put to Mr Goedegebuurre that what Mr Moffat or his organisers thought were acceptable risks might or might not be what an independent evaluation might conclude. Mr Goedegebuurre said:

"I presume no, yes."

It was put to Mr Goedegebuurre whether he had been informed at any time whether or not CAMS had disquiet about the safety aspects of the Run. Mr Goedegebuurre's evidence was:

"I've no knowledge of that."

It was his understanding that CAMS supported the event.

Mr Goedegebuurre was shown the letter dated 9 December 1993. Mr Goedegebuurre said that he had not seen that document before today. He acknowledged the letter proposed certain conditions that should apply to the Run. He further agreed that the proposals had been made by a highly competent and well respected body with a great deal of relevant experience and expertise in exercises of the kind involved. Mr Goedegebuurre believed that such a letter probably should have been brought to the attention of the committee by the organisers. He added:

"It might well have been brought to the attention of our operational people. I work at the policy level."

It was then put to Mr Goedegebuurre whether he would have expected his operational people to bring it to the attention of the committee. Mr Goedegebuurre said:

"Well, it certainly would have been brought to my attention, yes."

By 'at an operational level' Mr Goedegebuurre meant Superintendent Ey.

Mr Goedegebuurre said that had he been aware of the matters proposed by CAMS, he would have most certainly brought the matters to the attention of the other members of the committee. It was then put to Mr Goedegebuurre that the proposals by CAMS would have formed part of his discussions with the organisers because you would want to know what the response of the organisers was or might be to CAMS' proposals. Mr Goedegebuurre said "Yes, I guess so, yes." It was further put to Mr Goedegebuurre that the proposals would have been something that the committee should have looked at and raised with the organisers in order to understand what the organisers' response was to the

proposals. Mr Goedegebuurre stated:

"Yes, I would think that would've happened, yes".

The following proposition was put to Mr Goedegebuurre:

"But nevertheless if there was a rule which caused some difficulty or you thought really did need to be looked at and persuasion by the committee was insufficient to obtain that course, there were means by which, considering the membership of that committee, the government could have been informed of the relevant considerations and then it would have been a question for governmental responsibility."

Mr Goedegebuurre's evidence was as follows:

"That's correct, yes."

Mr Goedegebuurre was shown the letter dated 3 March 1994 from Cams to the Chief Minister. Mr Goedegebuurre said that to his knowledge this letter was not referred to the committee.

Mr Goedegebuurre was referred to the Chief Minister's letter dated 10 March 1994. It was put to Mr Goedegebuurre whether he was aware that a letter that purported to set out the work of the committee was being written by the Chief Minister. Mr Goedegebuurre said: "I don't recall the letter no". Mr Goedegebuurre said that he did not participate in the preparation of the drafting of the letter. Nor did he participate in any minute that went to the Chief Minister on the work of the committee.

It was put to Mr Goedegebuurre whether the committee had available to it any traffic statistics, that is road traffic statistics that showed the pattern and utilisation of relevant parts of the highway held by Transport & Works. Mr Goedegebuurre's evidence was as follows: "I didn't see those, but I believe it'd be work of our own experience over many years in the Territory". So far as Mr Goedegebuurre was personally concerned he relied for things like traffic density etc, upon his own experience of what might be expected in

the Territory over many years. Mr Goedegebuurre could not recall anybody bringing to the committee's attention any particular reports or statistics or figures in that regard.

The following was suggested to Mr Goedegebuurre by counsel assisting:

"What I want to suggest to you is that the letter of the Chief Minister seems to concentrate on the fourth point in the letter of 3 March of CAMS. That is: 'Our current ignorance of any specific proposal by your Government - approved by your Government of the concept and conduct of the event'. Do you agree with me? That is, what the letter of the Chief Minister does, in a fairly detailed way, describe the concept and conduct of the event and, in essence, say: 'We consider the Government does support it'".

Mr Goedegebuurre said: "Yes, that's correct, yes". It was further put to Mr Goedegebuurre that the letter did not deal in a direct way with the problems referred to in the first, second and third points. Mr Goedegebuurre said: "I guess it doesn't deal with the first point to a certain degree". It was then suggested to Mr Goedegebuurre that the reply did not deal with the issue of speed, evaluation of drivers, the character of the vehicles and their equipment. It was further put that the reply also did not deal with the intervals between vehicles and their likely size. Mr Goedegebuurre's evidence was this: "No, it does not". Mr Goedegebuurre agreed that leaving aside the fourth issue the other three issues were plainly important issues. Mr Goedegebuurre said that he would have thought that the other matters referred to in the CAMS letter ought to have been referred to the committee for its consideration. Mr Goedegebuurre said that he was unaware of the Chief Minister's letter. It was then put to Mr Goedegebuurre whether any of the other members of the committee were aware of the letter. His reply was as follows: "No, I don't know, nor do I know whether I might have missed one or two meetings because I was acting Commissioner for quite a period of time during that period, yes".

It was then suggested to Mr Goedegebuurre that the committee never requested an appropriately qualified traffic engineer or similar body to assess the impact and safety aspects of the Run. Mr Goedegebuurre's evidence was as follows: "Not to my knowledge, unless it was relied upon with Transport & Works itself, yes". Mr Goedegebuurre agreed with the proposition that so far as he knew the members of the

Steering Committee relied upon their own experience of Northern Territory conditions, and relied on the organisers in relation to the technical aspects of the Run.

Mr Goedegebuurre was asked whether in hindsight he would have been happier if an independent evaluation of the safety aspects of the Run had been conducted by the committee. Mr Goedegebuurre's evidence was as follows: "Extremely difficult to answer Mr Adams. I feel that Transport & Works has quite a bit of expertise in that area themselves in the engineering of roads, etc, etc, and I really can't answer whether I would be happy or not if that had happened". Mr Goedegebuurre agreed that whether or not Transport & Works had that expertise it was presumably available to Mr Chambers. Mr Goedegebuurre was not aware that such expertise had been made available to the other members of the committee for them to look at.

Mr Goedegebuurre was asked whether whilst he was on the committee he expressed any doubts or misgivings about aspects of the Run. His response was as follows: "Certain issues were raised by me and they were resolved, yes". Those issues related mainly to road closures and the question of whether some particular areas were to be closed for too long a time. Mr Goedegebuurre did not raise any doubts about whether or not it was wise to hold the Run which was proposed to be run. The reason for that was that Mr Goedegebuurre did not see it as his role to do so. He said that if it had been the role of the committee to make an evaluation then the committee would have done so. He said that he would presumably have used the resources of his Department to assist him in making that evaluation. Mr Goedegebuurre said that had such an evaluation been sought then it could have been obtained. He gave the following evidence:

"Yes, most certainly, but I should also say because our operational people who dealt with the Run itself would have made quite a number of assessments and observations about the Run".

Mr Goedegebuurre was then asked whether any such assessments and observations had been given to him in terms of a report. He said: "No, they were not, only in discussions with Superintendent Ey".

During cross-examination the witness gave the following evidence.

Mr Goedegebuurre agreed that the committee existed to facilitate the implementation of the Run. It also existed to ensure that the departments which would be most likely to be concerned with the Run were co-ordinated and provided what was necessary to make the event happen, and happen as safely as possible. Mr Goedegebuurre agreed that safety matters, that is what was to be safe or not safe in relation to the movement of traffic on the highway, was not a matter for the committee, but rather a matter for the police.

THE POLICE INVOLVEMENT

Superintendent Terence James Ey gave evidence at the inquest concerning the police involvement with the Cannonball Run.

The Superintendent told the Court that he was not asked to make any assessment as to whether or not the Run ought to proceed. He was told that it was his job to make the Run as safe as it could be made. His job was to "co-ordinate the police response to the Run."

The witness stated that he had not suggested to the organisers that a competition speed limit ought to be applied or might be appropriate because that was not his function. However, he did agree that there would be a number of sections of road between Alice Springs and Stuart Well where it would be dangerous to travel at say 200 kph.

At page 286 of the Transcript Superintendent Ey said:

"My function was to police the event and make sure the event ran in accordance with the law so that the speeds were relevant so far as my people were there to ensure that the people driving on the road were not driving at the speed - or in a manner that was dangerous."

The witness said that whether or not there was an instance of dangerous driving would be left up to the judgement of the individual police officer concerned. Superintendent Ey conceded that due to limited resources it was not possible to monitor every vehicle for dangerous driving.

The Superintendent agreed that a speed of 220 kph plus on a corner was necessarily dangerous not because the driver may not be able to negotiate the corner safely, but

because the driver does not know what is around the corner.

At page 302 of the Transcript Superintendent Ey seemed to agree that there is a big difference between a single instance of a motor vehicle travelling at very fast speeds (in excess of 200 kph) and a group of 118 competitive vehicles leaving at short intervals, and travelling at fast speeds, in terms of the probability of something going wrong. He said: "The risk will be increased".

At page 308 the Superintendent stated that "the more cars you've got on the road the more the risk you have of accidents". He agreed that the faster the vehicles were going the more risk again.

The witness was asked whether he would have liked to have seen a maximum speed limit imposed on the run. He replied as follows:

"Sir, the speeds limits really to me weren't really - it's not important but what I had to do was police the road. I think I've said this before, sir, that we - our responsibility was to make sure that the people drove on those roads and the speed as safe as they could. Now, to put a blanket maximum speed. I don't think - it really wouldn't make much difference to me. If you put a blanket maximum speed - parts of the road you can drive at a reasonable - you could drive at - say you put a maximum speed - well, we'll talk just figures - 200. If you put a maximum speed of 200, some places you can drive at 200 and some you can't. My job and the job of the police as I see, sir, was to make sure that whatever speed they drove along the road, at whatever section, they were doing it safely."

When asked if an event imposed speed limit might have contributed to safety, Superintendent Ey said:

"if the cars were forced to travel the slower speed it would be safer, I'd say yes."

Superintendent Ey was asked whether on reflection, he would have done anything different in relation to the Run. He said that there were a number of things he would have done:

- (1) *Increase air-surveillance to monitor the event*
- (2) *Put numbers on the tops of vehicles*
- (3) *More effectively inter-disperse police vehicles amongst competitors (ie maintaining a greater distance between police vehicles).*

THE INVOLVEMENT OF CAMS

(1) DOCUMENTARY EVIDENCE

Without being exhaustive the following documentation was tendered at the inquest in relation to Cams' involvement in the Cannonball Run:

- (1) *Cams Manual of Motor Sport (Exhibit 18)*
- (2) *The Stewards Handbook (Exhibit 19)*
- (3) *Bundle of Cams correspondence (Exhibit 16)*
- (4) *Letter from Cams to Doug Fraser dated 9th December 1993 (Exhibit 61)*
- (5) *Letter from Cams to the Chief Minister dated 3rd March 1994 (Exhibit 62)*
- (6) *Letter from Cams to Allan Moffat dated 3rd March 1994 (Exhibit 28)*
- (7) *Letter from the Chief Minister to Cams dated 10th March 1994 (Exhibit 63)*
- (8) *Cams Permit (Exhibit 29)*
- (9) *Transcripts of telephone conversations after the accident (Exhibits 31 & 33)*
- (10) *Media Release (Exhibit 39)*
- (11) *Fax from Cams to Graham Ward dated 26th May 1994 (Exhibit 49)*
- (12) *Stewards Report (Exhibit 36).*

(2) THE EVIDENCE OF BRUCE CHARLES NICHOL

Exhibit 17 was a statement of Mr Bruce Charles Nichol.

Mr Nichol told the Court that he had been involved in motor sport for over 25 years, as both a rally driver and navigator. He is presently Chairman of the Queensland State Council Confederation of Australian Motor Sport, as well as being an alternate delegate to the National Council for 1994. He told the Court that he was also a Cams senior steward and had served as senior chief steward for the Australian Rally Championships 1993-4, and as an international steward at Rally Australia 1990 to 1994, and at Rally Indonesia

1993.

Mr Nichol told the Court that "Cams is the ASN, or National Sporting Authority delegated by the FIA, which is the Federation Internationale de Automobile in French, which is based in Paris and has affiliations throughout most of the countries in the world." He went on to say that the FIA is the peak international body concerned with official rallies, road events and races.

Mr Nichol said that the Cannonball Run was unique compared to other road events. What made it unique was that it was held on public roads, the majority of which were subject to de-restricted speeds. Other than that, the event could have filled into what would loosely be called a rally or road event. The Run did not clearly fall within any particular standards defined by the national competition rules. Mr Nichol did say, however, that it could have been considered as a rally within Rule 16 but for the Flying Rule Challenges where absolute speed was relevant.

Mr Nichol gave evidence that there were significant similarities between the Cannonball Run and rallying. (Refer to pp 462-463 of the transcript.)

Mr Nichol was asked whether the route instructions used in the Cannonball Run were satisfactory from the point of view of the safety aspects of conducting the run. He gave the following evidence: "Well, not having seen the road conditions that they apply to, it is difficult to say that they were safer otherwise ..."

Mr Nichol was asked that if Cams had been involved in the run, i.e. its planning, would someone suitably qualified from Cams have been likely, and have been required, to run the course and evaluate the appropriateness of the route instructions. He stated that was a requirement in higher status rallies. He said that the Cannonball Run was possibly such an event. Mr Nichol went on to say that if Cams had been involved "it was more desirable that the route be double-checked".

Mr Nichol told the Court that a flying finish meant that vehicles are timed by clocking them while they are still moving on the route between markers. Rule 4.23 of the National Rally Code of Cams prescribed flying finishes.

Mr Nichol agreed that the benefit of flying finishes was that "you do not have people who might be running just a few seconds late who might be tempted to race up to a stop control point quickly, i.e. brake at the last possible moment in order to gain that extra second".

Attached to Mr Nichol's statement was a sketch plan showing the format of a flying finish and stop. Mr Nichol said that was one of the options available. He agreed that there would be variations on that option, depending on the location.

Mr Nichol said that even if a section ended in a restrictive speed zone (say 60 kph) a flying finish could still be employed.

Mr Nichol told the Court that the regulations for the Cannonball Run did not indicate that the control points were flying finishes. Mr Nichol said that in the absence of anything to the contrary one would expect a flying finish to apply to a rally type event.

Mr Nichol told the Court that "pre-warning" signs were not so important in rallies where flying finishes are the norm and average speeds, except for special stages, are limited in any event to 90 kph in de-restricted areas and 40 kph in built-up areas.

Mr Nichol told the Court that the regulations stated that the average maximum speed in relation to special stage rallies was set at 130 kph. Mr Nichol was not sure why such a maximum was set.

Mr Nichol was asked why was it important to run special stage events on closed roads. Mr Nichol said that most of these types of events were held in state forests, etc. on virtually single-lane gravel roads. It was therefore important to keep the public off the road whilst the event was being run. He agreed that the closure of roads boiled down to essentially "safety", as competitors usually drove as fast as they could in the circumstances.

Mr Nichol stated that helmets were mandatory in special stage events, during the special stage.

It was put to Mr Nichol whether the time set for the 95 kilometre from Alice Springs and the required change maximum speed to do the Run was safe. He said that it all depended upon the road conditions and traffic conditions.

Mr Nichol was asked whether he thought it desirable to impose a speed limit of the kind that was specified in the CAMS letter of 3 March 1993, ie a proposed maximum average speed of 140 kph. He said: "Well, again without knowing the conditions and without the - the relevance of meeting a speed greater than 140 kph, it's difficult to comment". As to why an average speed higher than 140 kph would ever be required Mr Nichol stated:

"As I understand it, that was for category 1 vehicles ... and in order to get a result and separate the vehicles, it may have been necessary to have a special - considered necessary to have a speed high enough in order to separate those vehicles".

Mr Nichol was unable to say that a speed of 140 kph would have reasonably led to a separation of the category 1 vehicles.

Mr Nichol assumed that part of the problem of setting any maximum average speed over a distance on public roads is the virtual impossibility of predicting the use of the road by non-competitors, and the nature of vehicles being driven by those people. Mr Nichol stated that any responsible organiser would have been aware of that problem.

Mr Nichol stated that the biggest problem with setting a maximum speed was policing it. His opinion was that the imposition of a maximum speed was impractical.

Mr Nichol said that having regard to the type of event the Cannonball Run was a restricted CAMS licence (ie a licence allowing one to compete in road events) was the appropriate licence. Mr Nichol stated that there were no particular requirements that had to be met to obtain a restricted CAMS licence. However, if a person held such a licence, checks could be made to ascertain the driver's level of experience.

In paragraph 11 of his statement Mr Nichol stated that: "if this had been a special stage run helmets would have been required". Mr Nichol went on to say:

"With the benefit of hindsight, because of the high speeds and the flying mile challenges and the high average speeds in the special sections, I would recommend that serious considerations be given to the use of safety helmets in any future event".

Mr Nichol stated that there were arguments against wearing helmets on public roads, but he observed that the Cannonball Run was being run at high speeds, and any additional item which may be of value in terms of safety should be considered. Mr Nichol gave the following evidence in terms of the arguments against wearing helmets on public roads:

"For long distances they're - they're a heavy item, they're restrictive of your ability to move in the vehicle. If there is a considerable amount of noise, you need an intercom system to be able to hear what your co-driver's saying and that, therefore, becomes a more complicated system than a - a normal helmet.

And maybe the case of feeling more secure in - in the knowledge that you've got a helmet on perhaps may make some people think they can travel more safely, simply because they have a helmet on."

He added that over long periods helmets became heavy and tiring. Mr Nichol gave the following evidence:

"Well, it is different from, for instance, wearing a helmet on a motorbike driving around the streets, because the G forces are significantly different in a car travelling at those speeds. And it's the G forces that add up when you've got a heavier weight on your head which causes the fatigue in your neck, I would imagine ... the effects of wearing are reduced by the amount of time that it's on".

As to the evaluation of the wearing of helmets Mr Nichol said:

"There are 2 factors; there is the matter of whether you compel them to wear helmets and then having to police whether they do and perhaps

applying a penalty to that.

Well, the - the type of terrain they were travelling over and the likelihood of discomfort; the type of vehicles that they were in - as you mentioned earlier about one of the vehicles with a difficulty with a roll-cage, it may not be possible for some vehicles to suitably fit or wear - for the competitors to wear helmets; and also the aspect of possible reduction in safety by not being able to communicate as easily with your co-driver. So if you make them compulsory, you would then have to consider making the intercoms compulsory as well".

The witness gave the following evidence during cross-examination.

Mr Nichol stated that the Cannonball event was approved by CAMS, and he believed CAMS would endeavour to make sure an event was safe before approving it.

Mr Nichol agreed that CAMS provided stewards to ensure that CAMS' standards were met. In fact, two very experienced senior qualified stewards were provided by CAMS. They were there to observe as much as possible to ensure that CAMS' requirements were met. The stewards had the power to dis-endorse the event if the requirements were not being met. However, Mr Nichol said that the power had never been exercised, and would only be exercised with reference to senior administration in the national office.

Mr Nichol said that it would be expected that any concerns CAMS had in relation to the Run would have been resolved prior to the issue of a CAMS permit.

Mr Nichol reiterated that the Cannonball Run did not fit comfortably within the categories of events with which CAMS usually dealt. He stated that the event was unique.

Mr Nichol agreed that the advantage of a rolling finish is that it ensures that the actual control point or stopping point is some distance away from the point the finish is actually timed.

Mr Nichol said that he was not aware of any adverse comments being made by the CAMS' stewards as to the stopping procedures actually applied in the Cannonball Run.

During re-examination, Mr Nichol gave the following evidence as to the kind of considerations that would justify a departure from the use of a flying finish in the competitive stages of the Run:

"Well, I could only speculate that there are a couple of reasons why the flying finish mechanism puts additional demands upon organisers and that is that you need additional officials, and then you need a mechanism of relaying the times taken at the flying finish to the control point in sufficient time that you don't delay the competitors. So you can't physically have someone running up and down with the times; you need some sort of communications. So that puts additional demands on the organisers".

It was put to Mr Nichol that that was not a matter that arose out of the environment of the Run as such, but one which related to the available resources. Mr Nichol replied as follows:

"Well, - well, also it relates to the environment of the event as I understand it. Being on the sorts of roads that it's on and at the speeds travelled, the distance between a flying finish and the control point would be towards its maximum and, therefore, the - the physical location of those 2 points is greater than it would be in a lot of rallies.

The point at which the competitor receives his time physically and the point at which it's recorded when he passes a flying finish. In this case those 2 points are the same.

In a flying finish, the distance is significant and in - it is greater the faster the approach speeds would be.

Well, if you're running a telephone system if you've got an extra 2 or 300 metres, then you need additional equipment; if you're running a - a - a system where some people - in this event, it wouldn't work because it's in daylight, but you may be able to have a flashing light or a - some sort of system that - where the clock is actually located at the finish point but the time is taken by relay.

And the further you have to put them apart, the more likely there is inaccuracies.

Well, given that it's for safety primarily, it - otherwise just creates more headaches for the organisers, it does nothing else, then obviously it - it increases the - or improves the safety aspect marginally".

Mr Nichol was unable to say whether the accident would never have happened had there been a flying finish.

Mr Nichol told the Court that the Targa Rally in Tasmania is held on closed roads and not subject to any speed limit. He stated that he was not aware of any other road events in Australia which are shared with the public at the type of speeds envisaged in the Cannonball Run. Mr Nichol agreed that there were significant differences between the Cannonball Run and other road events that made the Run unique.

At page 512 of the transcript Mr Nichol said that during the lead-up to the Run he had suggested an average maximum speed of 150 kph. When asked whether he suggested that speed on the assumption that the roads would be open to the public, he said: "I don't specifically recollect connecting the two".

(3) THE EVIDENCE OF EDGAR RAY RITCHIE

Mr Ritchie told the Court that he had commenced employment with CAMS on 11 April 1994 as its chief administrator, and had been recently appointed as Chief Executive Officer late August 1994.

Mr Ritchie was not involved in the several discussions that took place between CAMS and the organisers. Mr Ritchie had no formal briefing from any of the executive members of CAMS in relation to those discussions. He was, however, aware of a number of issues raised by CAMS with the organisers, eg speed limits, permit fee and the availability of CAMS' stewards for the event. He was also aware of a number of discussions between Mr Schenken and Mr Bruce Keys in relation to the Run.

Mr Ritchie said that he recalled being told by Mr Keys that he had had a meeting with Mr

Moffat at which Keys had advised Moffat of the determination of the executive committee in relation to the Cannonball Run. Mr Nichol said that a letter written by Mr Keys to Mr Moffat in relation to the executive committee meeting only came to his attention after the accident. That letter was Exhibit 28.

Mr Ritchie understood from Mr Keys that the executive committee determined the following matters: that CAMS would compromise no further than permitting sustained average speeds of 140 kph. He further understood that the Chief Minister and the Minister of Police were to be advised of the difficulties foreseen by CAMS, and to be asked for an assurance that the event was seen by them as running to community-acceptable standards.

Mr Ritchie said that he was aware that a letter was sent to the Chief Minister signed by Mr Keys. However, he did not see it at the time. He was also aware that the Chief Minister had replied to Mr Keys' letter. Both documents came into existence before Mr Ritchie joined CAMS.

Mr Ritchie stated that on 17 May 1994 he had given approval to the Cannonball Run on behalf of CAMS. Mr Ritchie was asked as to his belief at the time in relation to the acceptance or otherwise by the race organisers of the conditions imposed by the executive committee. Mr Ritchie gave the following evidence:

"I believed they had been accepted because I had no knowledge to the contrary, and I assumed that, as I had only been in the organisation for some time and recognised what its role in the motor sport community was, that when they documented conditions and published them that, in the absence of any evidence to the contrary, they were in fact accepted".

Mr Ritchie stated that he was asked by Mr David Tait (Vice-President of CAMS) to negotiate with Mr Moffat concerning the permit fee. He said that he attended a meeting on 15 May 1994 at Winton Circuit in Victoria, also attended by Messrs Schenken and Moffat. At that meeting the permit fee was discussed. The requirements of the executive committee raised in prior discussions were not discussed. Upon his return from Winton Mr Ritchie reported to Mr Tait, and Mr Large, the president of CAMS. Mr Ritchie was

authorised by Mr Tait and Mr Large to issue the permit. At that time it was Mr Ritchie's understanding that there were no outstanding matters of difference between CAMS and organisers. It was his understanding at the time that the CAMS requirements had been agreed to by the organisers.

During cross-examination Mr Ritchie gave the following evidence.

Mr Ritchie stated that he was not aware of the issue of helmets and the relationship of their use to the sanctioning of the event by CAMS. He was, however, aware of the speed issue. There was no discussion of speed nor helmets at Winton. Mr Ritchie had only become aware that helmets and speed were issues after the accident.

Mr Ritchie stated that at the time he signed the permit he had not seen the letter from CAMS to the organisers expressing concerns about the Run. He was not aware of any response to that letter by the organisers. Mr Ritchie took the lack of response to be an agreement to CAMS' requirement on the part of the organisers.

As to the terms upon which he signed the permit Mr Ritchie stated:

"I signed it on the basis that I was aware that all of the requirements had either been presented to the event organisers or the two that I specifically was dealing with had been resolved".

He then said that he had signed the permit on the basis that the competitors would be limited to a maximum average speed of 140 kph.

The permit (Exhibit 29) bore a signature that purported to be that of the Secretary of the National Council of CAMS. Mr Ritchie believed that Mr Keys, on instructions from him (ie, Mr Ritchie), arranged for the permit to be drawn up.

As for the actual permit which was issued, Mr Ritchie said:

"With the experience that I now have in CAMS I would personally ensure that every critical aspect of an approval was documented in the permit".

Mr Ritchie agreed that in the absence of complaints from the stewards, one would assume that the event was being conducted in accordance with the CAMS requirements.

(4) THE EVIDENCE OF TIMOTHY THEODORE SCHENKEN

Mr Schenken told the Court that he was the motor racing manager for CAMS. He had held that position for about 10 years. He had also had experience as a race driver and/or organiser.

Exhibit 30 was Mr Schenken's statement to the Coroner.

Mr Schenken told the Court that at a meeting with Mr Moffat on 21 February 1994, Mr Moffat had proposed a maximum average speed of around 200 kph. Mr Schenken regarded such a high average speed as being excessive.

Mr Schenken explained his opinion as follows:

"In my view the type of driver which this event will attract will be owners of exotic cars rarely driven at sustained high speeds. It will be almost impossible for them to average speeds of 200 kilometres per hour".

That was his personal view which he expressed at the meeting. Mr Moffat had replied by saying that these speeds were attainable. Mr Schenken did not doubt that Mr Moffat would be able to achieve those speeds, but doubted it in the case of "normal sporting drivers".

Mr Schenken was of the view that there is and there is not a relationship between speed and safety. Mr Schenken explained himself:

"Speed can on the appropriate road, if we're talking about roads, or circuits, can be quite safe, high speed, in some circumstances and other circumstances it can be lethal."

He went on to say that the experience of the driver actually driving at high speed would be a relevant consideration. The entire circumstances of the driver environment would also be a relevant factor.

Mr Schenken was aware that the touring sections and special stage sections of the Run were to be conducted on open roads. He was also aware that outside built-up areas, there was no speed limit. Mr Schenken said that CAMS generally had a reasonable understanding of the nature of roads in the Northern Territory.

Mr Schenken gave evidence of a telephone conversation he had with Mr Moffat on or about 21 April 1994. His diary recorded Mr Moffat having said the following during that conversation: "Pulled event back, introduce speed limits". He believed that Mr Moffat had said that in response to the previously raised concerns as to high speeds in the Run.

Mr Schenken told the Court that he did not recall the letter dated 3 March 1994 from CAMS to Mr Moffat.

Mr Schenken was asked his understanding as at April 1994 about whether the CAMS proposed conditions on speed had been accepted or rejected by Mr Moffat. Mr Schenken said:

"Probably best answer that by saying that I believe that Mr Moffat had taken some heed of our position. Had looked at his position and had decided that somewhere in the middle, or thereabouts, was appropriate in terms of average speeds".

Mr Schenken said that he had informed Mr Keys of Mr Moffat's statement of "having pulled the event back".

At a meeting with Mr Moffat and Mr McVean at Lakeside in April, Mr Schenken said the following happened:

"I think it's - if I could just say that that meeting, first of all I had other responsibilities at Lakeside that day and I was at the meeting for only short

bursts. My recollection is that the principal reason for the meeting was to discuss permit fees. But at one point when I was in there, I think towards the end when for some reason there was a lull in the topic of the permit fee, Mr McVean - we somehow got to discussing the average speeds or driving on the roads in the Northern Territory and Mr McVean said to me in words to this effect: 'I've driven some of the sections and was not comfortable following Allan' - Moffat of course - 'at speeds of 200 kilometres an hour, 180 kilometres an hour was more appropriate for me.'

Apart from that, Mr Schenken said that there was no discussion about speed.

As at 5 May 1994 Mr Schenken believed that the question of average speeds had not been resolved. However, the organisers wished to run the event under CAMS' sanctioning.

Mr Schenken gave the following evidence under cross-examination.

Mr Schenken told the Court that at the time the event was run he was not of the view that the event was being operated with maximum average speeds of 140 kph in place on open road sections.

Mr Schenken did not recall having discussed the matter of average speeds when Mr Tait issued a press release to the effect that an average maximum speed of 140 kph had applied to the event.

During re-examination Mr Schenken said that at the end of the day he did not know one way or the other whether an official of CAMS had come to a final agreement with the organisers on the question of maximum speeds. He said that was not an area of his responsibility.

(5) THE EVIDENCE OF BRUCE MALCOLM KEYS

Mr Keys told the Court that he was currently employed by CAMS as manager, Rally Division and manager, Technical Services Division. Mr Keys took part in various discussions with the Run's organisers prior to the Run.

Mr Keys said that he could not recall specifically discussing flying finishes with Mr Moffat during meets prior to the Run. However, Mr Keys said: "its my assumption that they would've been flying finishes". He could not recall specifically Mr McVean, Mr Fraser or Mr Moffat saying that flying finishes were inappropriate. He could not recall at any stage any of the organisers saying to him: "We will not have a flying finish". Mr Keys said that if he had been told that "it would certainly be a very unusual approach or certainly be a very unusual application, because for road events we have flying finishes".

Mr Keys gave the following evidence in relation to flying finishes:

"Flying finishes provide a means by which the competitor can be assured that his time is taken at a particular point when he is in full competition mode and then there is a distance where he may slow down - slow down and report to the control before - during the - the section the organisers envisage his speed can be recorded accurately without the added consequences of having to rapidly brake to slow down to - to get to a control in order to have the time taken at the particular time when the competitor stops".

On 9 December 1993 Mr Keys wrote to Mr Fraser setting out CAMS' concerns. Mr Keys said that his reference in that letter "to a group of 150 competitive drivers in high powered cars at 30 second intervals all trying to beat the car in front, and the probability of something going amiss is going to be many folds greater" was a reference to the Cannonball Special Sections. As to the tendency of competitors all trying to beat one another Mr Keys said:

"This was going to be a - an event in which it was put to the might-be competitors by the organisers, and also by its very name, that it was going to be a high speed competitive run and competition experience has - has

shown me that when people are placed in a situation where they have a high speed car, they're enthusiastic drivers, they will exploit that - the limits of that car. In most circumstances they will exploit the limits of that car. Therefore, it's my opinion that if the - there would've been a number of instances where the competition environment may well have prevailed over the - the - the natural reluctance of people to - to curb their own desire and to put their foot on the accelerator".

Mr Keys said that one of the avenues pursued for controlling that situation was the imposition of a maximum average speed of 130 kph. He stated that separating the vehicles may well have decreased CAMS' concerns.

Mr Keys was referred to page 3, paragraph 4.2 of his letter which read:

"Competitive stages which would be held on roads closed to the public and for which the maximum average speed would be established which would not be greater than 130 kph".

Mr Keys' understanding was that the organisers had hitherto proposed greater speeds than 130 kph and non-closure of roads. Mr Keys' evidence was that CAMS would have preferred the road to be closed, and that the average maximum speed would not be greater than 130 kph.

Mr Keys stated that the letter in relation to the matter of speed represented the opinion of the Confederation. He added that within the Confederation there would have been some people who would have proposed higher speeds and some who would have suggested lower speeds. Mr Keys stated: " ... 130 kilometres an hour was the speed which I felt I could sustain, in my own mind, specifically with relation to the FIA regulations governing average speeds on kindred type of events such as rallies".

On 18 December 1993 the organisers wrote to CAMS wishing to discuss the 130 kph limit. Mr Keys said that up until the time of the event, CAMS had further discussions with Mr Moffat. He did not recall discussing the matter of speed with Mr McVean.

On 3 March 1994 Mr Keys wrote a letter to Mr Moffat concluding:

"Please note, this position is the official position of CAMS and is not open to negotiation. It supersedes all other offers and correspondence we have had with you on any and all previous occasions".

The letter had been written on the instructions of the Chief Executive Officer.

Mr Keys said that the proposed 140 kph maximum average speed for the Cannonball Special Section was a little higher than that which he had earlier proposed. He stated: "... any personal judgment at this stage I don't believe was relevant because I was acting under instructions to my employers". He stated that the executive committee had proposed a maximum average speed of 10 kilometres an hour faster.

It was then put to Mr Keys whether in his personal judgment a maximum average speed greater than 140 kph was an unacceptable risk. He seemed to be saying that whilst it was a very difficult question to answer, the higher the speed the greater the risk.

Mr Keys said that the fundamental difference between the Cannonball Run and the Targa Tasmania was the straight road conditions in the Northern Territory that would create a problem because cars would not be constantly slowing down for corners, and then having to accelerate up to speed again - in other words constantly high speeds would be maintained. He stated that roads were closed in the Targa Tasmania.

Mr Keys said that, having written the letter of 3 March 1994 to Mr Moffat, he did not recall having any authority from the executive committee to vary any of the conditions. Mr Keys said that at no time did he vary the conditions.

Mr Keys recalled meeting with Mr Moffat after March 3 at the CAMS office at Camberwell. Mr Keys recalled talking to Mr Moffat about the 140 kph limit. He said that Mr Moffat was non-committal.

Mr Keys had told Mr Ritchie of his discussions with Mr Moffat, in particular relating to the requirement of the executive committee of Cams.

The witness told the Court that Mr Schenken had told him that Mr Moffat had brought back the speeds. Mr Keys took Mr Moffat to be referring to average speeds on the special sections.

Mr Keys did not specifically recall briefing Mr Bell on the 140 kph limit.

Mr Keys told the Court that the first supplementary regulations were drafted by him and approved by Mr Schenken. The witness was referred to page 8 of the Supplementary Regulations Manual dealing with safety helmets. There was a requirement there that safety helmets were to be worn during all competition sections of the Run by all crew members, but not required to be worn during the Grand Tourer Sections. He was at the same time referred to page 8 of the Rules Procedures and Supplementary Regulations Manual. There it was stated: "The wearing of safety helmets is not compulsory, however it is recommended during the flying mile challenges." He was then taken to the further Supplementary Regulations. On page 3, paragraph 7 at (f) the following appeared: "Failure to wear a safety helmet as specified in the 1994 Cannonball Run Supplementary Regulations Section 3 Article 3." Mr Keys agreed that that statement was only meaningful in relation to a requirement to wear safety helmets. He agreed that there would be no need to have a judge of fact if the wearing of helmets was at the choice of the competitor. Mr Keys said that he was referring to the Supplementary Regulations manual rather than the Rules, Procedures and Supplementary Regulations Manual. He said that it appeared he was referring to what he called the draft regulations and not the final regulations. He surmised that when he prepared the first supplementary regulations he had only the draft regulations and not the final regulations in front of him.

It was Mr Keys understanding that at the time of drafting of the further supplementary regulations the applicable requirement in relation to safety helmets was still that they must be worn. However, it was his view that there were good reasons for not requiring helmets to be worn in the touring and special sections. He accepted that it was not unreasonable not to require safety helmets to be worn in sections other than the flying mile.

During cross-examination the witness said that the purpose behind Mr Bell and other stewards attending the Run was to ensure that the requirements of Cams were being adhered to by the organisers.

Mr Keys said that he could not recall receiving a letter from Racecage accepting the Cams requirements as per Cams' letter of 3rd March 1994.

It was put to Mr Keys that the fact that Mr Moffat had told Mr Schenken that he had brought things back a considerable amount did not mean that the Cams requirement had been accepted. However, Mr Keys said that it did not indicate that the requirement had been rejected either.

Mr Keys told the Court that he did not specifically recall at any stage talking to Mr Moffat about the flying finishes in the special sections.

With reference to the Cams letter of 3rd March, setting a 140 kph maximum average speed, it was Mr Keys' understanding that the roads would not be closed to the public.

The witness gave the following evidence during re-examination. It was Mr Keys' understanding that in the Targa Tasmania if a participant had no previous competition history he was required by the organisers to satisfactorily undertake some performance testing.

Mr Keys told the Court that he had played a part in the press statement issued by Mr Tait on 24th May relating to the Cannonball Run. That press release (Exhibit 39) is set out in full as follows:

"CAMS STATEMENT - CANNONBALL RUN

The Vice President of the Confederation of Australian Motor Sport (CAMS), Mr David Tait, said the sport was in shock at the news of the deaths today in the Northern Territory Cannonball Run.

Two competitors and two officials lost their lives after a crash near Orange Creek during the third day of competition. The driver, Akihiro Kabe, and his co-driver, Takeshi Okano, were leading the event at the time in their Ferrari F40.

Mr Tait said while competitors may size up the risks of competition and accept them, the deaths of two volunteer officials was particularly upsetting.

"We understand the Ferrari entered the finish of a Cannonball Special Section (average speed section), lost control and hit the control officials who were standing beside their vehicles at the time." he said.

Mr Tait said CAMS' administration had been assured that not only were the CAMS guidelines being adhered to but the Northern Territory road rules were also being strictly enforced.

"The Northern Territory of course has no set open speed limit but CAMS required that a maximum average speed of 140 km/h be placed on all open road sections."

He said CAMS is aware that the Northern Territory and its Chief Minister had been working very hard to ensure that this exciting new event would be conducted with safety.

"There is no doubt that the government and the police will be looking at the circumstances of the crash and, together with the organisers, we are available to give any necessary assistance."

"On behalf of the sport, we extend our deepest sympathy and condolences to the family and friends of the crash victims," Mr Tait said."

It was Mr Keys firm understanding that when the event started that a maximum average speed of 140 kph applied.

(6) THE EVIDENCE OF MICHAEL ANDREW BELL

Mr Bell, who was appointed Chief Cams' steward for the Cannonball Run, prepared a report following the accident. That report was Exhibit 36.

Mr Bell said that Mr Keys had told him that Cams had proposed a maximum average speed limit, but that had not been accepted by the organisers. Mr Bell had that conversation with Mr Keys in the week leading up to the event. He did not have any subsequent discussions with Mr Keys. Mr Bell approached the event on the basis that whatever the maximum average speeds were to be, they were within the organisers' area of responsibility. It was, therefore, not part of Mr Bell's duties to judge whether the speeds

achieved during the run complied with maximum average speeds as required by Cams.

Mr Bell stated that he was never given the times for the special sections. He did not specifically ask for them. He said: "I did not feel that was the paramount information I required at the time." He felt that way because he was approaching his task on the basis that that was not anything that had to do with Cams.

According to Mr Bell, after the accident a maximum speed of 180 kph was set by the police.

Mr Bell gave evidence that on the third day general traffic was slowing down the general field.

Mr Bell said that he was not concerned nor surprised that stop finishes were being used to time competitors.

In his report Mr Bell concluded that the lack of a flying finish in the event showed a lack of experience and awareness by the organisers of other events. In saying that he had presupposed the organisers had not considered a flying finish.

The second matter raised by Mr Bell in his report concerned control identification signs. He noted that the actual designs of the signs were not the same as in the normal international rallies.

The third matter reported on related to the absence of warning signs for control points. (Refer to page 862 of the Transcript).

Mr Bell could not recall being told by Mr Keys that safety helmets were required to be worn during the event.

The witness said that Mr Keys had told him that there were no speed limits in place. He went on to say: "He didn't use those words. His words were that we hadn't - the organisers had not agreed to a 140 kilometre an hour limit."

THE ORGANISERS OF THE EVENT

(1) Documentary Evidence

Without being exhaustive the following documents were tendered in relation to the organisation of the event:

- (1) Promotion Catalogue (Exhibit 9)*
- (2) Feasibility Study (Exhibit 20, Annexure A)*
- (3) Route Instructions "Day 3" (Exhibit 7)*
- (4) Route Survey (Exhibit 13)*
- (5) Mr Kabe's Application Form (Exhibit 26)*
- (6) Two Press Releases (Exhibit 32)*
- (7) Road Train Movement Schedule (Exhibit 34)*
- (8) Cannonball Run Regulations (Exhibit 38)*
- (9) Flag Marshals Duty Statement (Exhibit 50)*
- (10) Time Trials - 20/5/94 (Exhibit 51)*
- (11) Allan Moffat's Recommendations to Cannonballers (Exhibit 57)*
- (12) Time Sheets (Exhibit 60)*

(2) THE EVIDENCE OF GRAHAM MCVEAN

Mr McVean told the Court that he and Mr Moffat were directors of Racecage Pty Ltd, the organisers of the 1994 Cannonball Run.

Mr McVean's statement to the Coroner was Exhibit 25.

Mr McVean said that his role in relation to the Run was that of administering and facilitating the Run, though he had been involved in the route surveys, and participated in all discussions relating to such matters.

Mr McVean said that he and the other organisers believed implicitly in the safety factors which they had built into the event. He added: "I'm not saying that it doesn't mean that in reflection, when we get a chance to reflect, that some things could not be changed".

Mr McVean was of the opinion that in hindsight the safety requirements or aspects of the run were adequately met. He personally believed that the positioning of control points and the safety procedures that were put in place were adequate.

Exhibit 26, which was tendered through this witness was Mr Kabe's application form for the event.

Mr McVean stated that he would be confident in saying that he attended two steering committee meetings. In addition there were several ad hoc meetings.

It was put to Mr McVean that the Run was planned under the auspices of the Northern Territory Government. Mr McVean's reply was as follows:

"No, we weren't - well, Mr Moffat was in Alice Springs for the Honda Masters Games in 1992. He'd had some discussions with the local member, I think it was a Mr Vale, talking about the roads up here and the fact that the government had a proposal before them by the Darwin Motor Sports Council to use the highways for such an event. And that they had had proposals from two bodies in relation to it, but they were unacceptable to the government because those two bodies wanted to promote the event as a race. One wanted to start it in Queensland, finish it in Adelaide in time for the Grand Prix. The other wanted to start it on the Gold Coast and finish it at Calder Park Raceway in Melbourne."

Mr McVean then gave the following evidence:

"When Allan came back he phoned me and said that he'd had this discussion, what did we think. We then received a call from the Chief Minister's Department and they asked if we would like to come up and have a yarn about it, which we did. And it was actually at our suggestion that a feasibility study be carried out. We - we generally agreed with the people we were talking with that it was an exciting concept, but (a) it had to be checked out for - that it be done safely, and (b) could it be done financially without really destroying either a private individual company or being a cost burden on the government, because the Indy race in Queensland,

as you're aware, is into the coffers for about \$50m, and in Adelaide a similar thing. So it was at our suggestion that a feasibility study be carried out."

Mr McVean stated that there was no question that Racecage was acting under the auspices of the Northern Territory Government. He said that there was an expectation that the Run would be meticulously planned under the auspices of Cams. He then added that was an expression of hope rather than of fact.

Mr McVean stated that although some of the vehicles in the event were capable of being driven in excess of 240 kph, their ability to be driven at those speeds would be limited "through timed sections". He agreed that the publicity suggested that the faster group of cars would be required to maintain a cruising speed of 190 kph. He could not recall the applicable speed for the lower class of vehicles.

Mr McVean agreed that it was never the case that the competitive sections of the event, with the exception of the flying miles, would be on closed roads.

Mr McVean was referred to the Cams letter dated 9th December 1993 to Mr Fraser. Mr McVean agreed that Racecages' proposal was different to the Cams' proposal. Cams were proposing in the competitive stages a maximum average speed of 130 kph on roads closed to the public. On the other hand Racecage were looking at greater maximum average speeds on open roads.

Mr McVean did not agree that it would have been better to commence competitive stages in the derestricted zones. Mr McVean stated that the times set for the competitive stages took into account the fact that vehicles would be required to travel through a restricted zone for part of the journey.

Mr McVean said that he had run the course from Alice Springs to the 195 kilometre checkpoint in the time set by Mr Moffat, and he was able to achieve the 34 and a half minute window without exceeding 230 kph.

Mr McVean expected that the category 1 vehicles would have to average 198 according to calculations which were done.

Mr McVean stated that when he sat down with Mr Moffat to calculate the speed for that section, he did not envisage that some vehicles might find it necessary to average 208 kph in the derestricted zone to make up time without penalty.

Mr McVean said that he had not discussed with Mr Chambers, or any government body, whether or not it might be possible to have closed roads for the competitive section. He said that was never really a consideration from his point of view. That consideration was never put to Mr McVean by any member of any relevant government authority.

Mr McVean said that Cams did not come to grips with the unique character of the proposed Cannonball Run, and their letter of 9th December 1993 was an attempt to place the event within their own actual experience, and the rules which they had devised for that purpose. That was Mr McVean's view as to what was underlying the conditions proposed by the letter.

Although he was prepared to agree that there was some confusion with Cams, he was not prepared to agree that Cams had issued its permit upon an understanding which was different to that which he and Mr Moffat had, and that the parties were at cross-purposes. However, Mr McVean accepted that Racecase did not receive from Cams any categorical approval that specifically referred to the average speed times proposed by himself and Mr Moffat.

Mr McVean then gave the following evidence:

"The long answer is that the question of speed was discussed in our negotiations with Cams from late 1993 up until about early March. In March they wrote a letter suggesting that they were, the conditions that we had imposed on the touring sections, the Flying Mile and the competitive sections, as per our rules and regulations tendered to them early in '94 and subsequently adjusted by Mr Tait, their Vice President and who is a barrister, were acceptable to them but they left the proviso in that the speed at that stage would increase perhaps to 140 average. We never varied in any discussion we had with any Cams official that a speed limit imposed on an event like this of 140 average would reduce the event to almost a non-event. We had discussions with members of the steering committee, with

members of the Chief Minister's office, and it generally decided, and our words to Cams were always that people in the Northern Territory go to work at average speeds faster than 130/140. To put that sort of a restriction on our event, we would virtually be faced with cancellations."

Mr McVean told the Court that there was never any response by the organisers to the letter of March to Mr Moffat asserting the requirement of 140 kph as a maximum average speed. He said that it was correct that the organisers neither accepted nor rejected the speed.

Mr McVean stated that in a subsequent conversation with Mr Keys he had told him that the 140 limit was unacceptable. It was put to Mr McVean if Cams insisted on the limit, the event would proceed without Cams approval. Mr McVean said: "That was where we were leading." However, Mr McVean could not say whether he had in fact said that to Mr Keys. Mr McVean then added that he had in effect said that if the speed limit of 140 kph were imposed, the organisers would reject the condition and run the event without Cams approval.

Mr McVean was asked about his understanding on the issue of speed. He stated: "I assumed that Cams had accepted a compromise in their 140 kph suggestion or requirement, because they had compromised on almost every other issue that we had put before them."

Mr McVean stated that flying finishes were the subject of discussions at the meeting the organisers had with Mr Keys in Brisbane. He said that the organisers had put their case in relation to flying finishes. The subject was never raised again with Cams, and never became an issue until it was raised during the inquest.

Mr McVean said that when Mr Keys was told that the proposed maximum average speed of 140 kph was unacceptable, Mr Keys appeared to take it "on board and made no comment." Mr McVean stated that the matter of speed was not the subject of any further meaningful discussion.

Mr McVean gave the following evidence in relation to flying finishes:

"I've participated in flying finishes in rallies. I consider them to be very dangerous. Imagine you're arriving - in a normal rally under Cams rules there are no times set as we set them in our event which we thought was a limiting factor on the speed. The object of Cams rally is to get from this point to that point at your fastest possible time. You could come through the flying finish at 180 kilometres an hour and be clocked at that time, then have a requirement to stop from whatever speed you came through to zero in somewhere between 100 yards and 200 yards. We considered, given the conditions and the types of cars that we were operating in, it was far better and more appropriate for us to bring a car into a shutdown zone, shut him down to 120 kilometres an hour, a point past that slow him down to 60 kilometres an hour and have him roll through at 5 kilometres an hour. There was no requirement in ours to stop at the control point. You roll through at 5 kilometres an hour."

He said that the scenario of a driver racing into a checkpoint with a stop finish to make up time was considered. Mr McVean went on to say:

"And at the end of the day we took a judgement that the way we had set up with the route notes, with the warnings, with the flag marshals, with the shutdown zones and the conspicuous nature, that - and the penalty that that would not occur. There's one other thing that we took into account when not wanting to do a flying finish. From my observations, flying finishes have always been the point where the public would congregate to watch in great numbers, because of the excitement of a car coming into a control point at almost full speed, and we considered that it was better for crowd control to keep the public away from our finishes, and that's why we didn't publicise where the - where the starts and the finishes were every day."

Mr McVean told the Court that there was no practical difficulties in having a flying finish where the accident occurred.

Mr McVean stated that it would be possible to do 200 kph on the slight right-hand bend going into where the checkpoint was.

Mr McVean agreed that in order to determine whether or not to use flying finishes one sets up hypotheses and asks what is the safest way to deal with the matter.

Mr McVean told the Court:

"We didn't look at that particular control point with a view to doing a flying finish at all. We had determined that our mode of bringing cars into a control point was the way we did it. We then set about putting in train the safety procedures that we believed needed to be done to make our decision safe."

Mr McVean agreed that there were all types of matters one needed to deal with when deciding what type of finish would be used (for eg a vehicle is running late approaching a checkpoint, a vehicle is going in excess of 200 kph or the other vehicles on the road possibly distracting the vehicle approaching the checkpoint).

Mr McVean agreed that a flying finish does not require a driver to effect a change of direction. He also agreed that a driver does not have to change his speed until after he is through the timing point. He also agreed that once the vehicle had passed the timing point, there was no need to limit the point at which the vehicle came to a stop.

Mr McVean stated that consistency was an important consideration. He said: "...for us to have a flying finish in the middle of Katherine or in the middle of Mataranka, we just considered was totally irresponsible". He agreed that the middle of town did not have to be chosen as the finish point. Mr McVean added: "But in towns we had the added advantage of it being an obvious shutdown zone."

Mr McVean agreed that where vehicles are required to change direction or stop or slow down going very fast, that was where the risks to safety increased.

Mr McVean was asked his view as to the kind of considerations that militated against having a flying finish at the point in question. He said: "my recollection of flying finishes is that they require more people" (ie more officials). He added:

"A flying finish doesn't necessarily have, we thought, the advantage of - that we

provided of a flag marshal; it relies more heavily on signage and - and it's - it's an indefinite number. On some of them you see up to 4, 5 officials, and for - for that reason in addition to the others, was one of those that we went away from the flying mile but I think that the--- The flying finish; but the primary reason was the one of consistency, that we were wanting to stop in some towns and that we felt that the slowing to 120 to 60 down to 5 were the safety precautions we needed to put in, and we had been through this with CAMS, and the issue of flying finish was never raised from the first meeting to put these people through control points. They asserted to us that their normal way of doing it was a flying finish and would we consider, and we did, but the issue with CAMS of a flying finish was never raised from that day to now."

Mr McVean stated that he did not believe that had there been a flying finish at the checkpoint, the four deaths might not have occurred.

Mr McVean was asked if in relation to the subject checkpoint he had concerns about resources. He said: "If we needed more people we would have asked for more people."

Mr McVean said that he could not think of any other matter that he had not raised which militated against a flying finish at the subject checkpoint.

Mr McVean was asked whether he had discussed with the members of the steering committee the issue of whether there should be a flying finish or whether there should be a different kind of finish. He stated: "It would not have been the matter of direct discussion because that was a matter for the organisers."

Mr McVean told the Court that the times set for the competitive stages were based on the times that it took Mr Moffat "to run the road" in a category 2 vehicle. He said "Moffat would sit on what he considered to be safe speeds in a category 2 car."

Mr McVean said that he had no difficulty in doing the Alice springs to Stuart Well section in the set time of 34 and a half minutes. He said that he did not exceed 228 kph. He said that he averaged about 198 kph.

Mr McVean stated that no direct driving test was applied to entrants in the Cannonball Run. He said: "..... there was a process of screening but it was certainly not a definitive test...." He described that process in the following terms:

"With either representatives of individuals or individuals themselves. We had a 008 number installed in our office from the outset and the procedure was that if you were interested in the event, you rang the 008 number and you were then subjected to generally a bit of a fireside chat with myself and in that conversation I would try to get from the person 'How long have you had the car; how long have you been driving it; have you had any competition experience; have you had it out on the backblocks of New South Wales; what sorts of speeds are you used to driving this car at?' And we had actually rejected people into the event because in my view, they didn't come up well at that initial interview. I - you - you get to identify the tyre kickers and I advised several prospective applicants that 'This event is not for you.' there was a lad phoned and said can I get in the event?'"

As to the state of knowledge of the driving experience of accepted entrants Mr McVean stated:

"We knew quite a bit by the time they arrived. We knew for instance that we had a smattering of current race drivers that - that - that were still competing; we knew that we had had some retired people that had been involved in Australian and overseas motor sport; we knew that we had some father and son combinations. We had a fair idea of those that wanted to be competitive and those that were treating this as an opportunity to come to the Territory and enjoy some fellowship."

Mr McVean said that about 20 of the participants had competitive racing experience, and about 3 were currently involved in racing.

As to the type of skills drivers had Mr McVean said: "....you assume that somebody with a high performance car has had the opportunity on occasions to get it up to those speeds." He agreed that was a assumption. He also agreed that he took no steps to test the accuracy of that assumption.

Mr McVean gave the following evidence during cross-examination.

Mr McVean was shown a document entitled "Rules, Procedures and Supplementary Regulations Manual." He stated that that document was not supplied to Cams until about 5th May 1994. However, an earlier document (a Supplementary Regulations document) had been provided to Cams sometime in March 1994.

Mr McVean told the Court that the Rules, Procedures and Supplementary Regulations Manual had been sent to competitors in late March. He said that that document deleted any reference to Cams. It was put to Mr McVean that Cams involvement had been written out of the regulations for the event. His reply was as follows:

"At the suggestion of our legal advisers in Sydney, when it was perceived that we were having some difficulty in negotiating the price of the - of the permit and we were pushed, and certainly we thought we had an obligation to competitors to get the information to them so that they could plan for the event and get it in their mind, rather than have an embarrassing situation with Cams, we did delete it, yes."

Mr McVean agreed that the Supplementary Regulations Manual contained a reference to safety helmets. He stated that according to that document, which he described as a preliminary draft, it was compulsory to wear safety helmets in the Flying Mile Challenges and the Cannonball speed sections.

Mr McVean stated that within a week or so of the event, he received some "Supplementary Regulations" from Mr Keys. He accepted that they were faxed to him on 10th May 1994. He stated that he would have read those regulations. Mr McVean was referred to page 3 of the document, paragraph 7. At the top the document read: "Any official appointed by the organisers is a judge of fact, will be a judge with respect to the following matters." Paragraph (f) read: "failure to wear safety helmets, is specified in the 1994 Cannonball Run Supplementary Regulations Manual, section 3, article 3." When it was suggested that was strange Mr McVean stated:

"I wouldn't have thought so, because in the supplementary rules and regulations sent to Cams a week prior to the event, and to competitors, there was indeed a rule

and regulation in relation to safety helmets and - well there was not so much a rule, there was a recommendation, and we would've thought that they were applying that particular statement to that paragraph."

It was clear that the document sent to Cams in May, entitled "Rules, Procedures and Supplementary Regulations Manual" did not impose any regulations on competitors to wear safety helmets.

It was put to Mr McVean whether it occurred to him to ask why an official need be a judge of fact with respect to the failure to wear a safety helmet. He stated: "Didn't apply - I'm sorry, it didn't occur to us, no" He added:

"At the end of the document you will note that amendments to these regulations will be provided from time to time and we could change the Supplementary Regulations as decided by the organisers as long as we posted to competitors, prior to the start of the event, any changes. And indeed we did post changes to the supplementary rules and regulations as late as the night before as they were given to us by Cams."

Mr McVean did not say that any amendment in relation to safety helmets was posted.

He said that during the translated briefing of the Japanese drivers, they were told that helmets were not mandatory during the competitive stages, but they could wear them if they wanted.

It was put to Mr McVean that in early regulations for the event, the finish was documented as being a flying finish with electronic timing as people crossed the finish line. Mr McVean's evidence was as follows:

"That was one of the proposals we put to them that we would like to investigate. If there was electronic timing equipment that was available that would require a minimum number of people and also maximise us being able to get the results back to headquarters as possible."

Mr McVean stated that the option of vehicles crossing an electronic beam which in fact marked the finishing line had certainly been discussed. He agreed that was in effect a flying finish. He added: "...a flying finish without people. It was technically not possible".

As to why it was not possible he said:

"Well we - we talked to Digital and a couple of companies in relation to what we would like. We also discussed with Mr Keys and Bruce Nichol our proposal to have each car bar-coded and they expressed that they weren't aware of that sort of technology, they took us through the way that - which we knew - the way that they did it and that's where the discussion about flying finishes centred, at that meeting."

Mr McVean agreed that the Supplementary Regulations provided to Cams (see paragraph 5.2 page 18) dealt with the finishing procedures for special sections. It referred to the use of an electronic beam for timing vehicles as they passed. It also provided that that line shall be deemed to be the finishing line.

Mr McVean told the Court that he did not consider the use of a "Terra - trip" when setting the route instructions. He agreed that terra - trips were commonly used in rallying. He described a "terra - trip" in the following terms"

"A terra trip is a mileage or a kilometre counter or indication that taps into either your disk brake, with a pulse, or into your tail shaft, and it gives you the opportunity to - it takes the place of your odometer if you like, but it also gives you the opportunity to be able to balance in calculations - to adjust as you're going along, and also pre-select points on your route notes that you might need to reference. Cost about \$600."

Mr McVean said that if a "terra - trip" is calibrated correctly, it is likely to be more accurate than an odometer. He then went onto give the following evidence:

"The great difficulty with the terra trip is that if you are out - and you shouldn't be - but if you are out in your initial calibration of it you can then have a compounding

effect, particularly with cars of varying makes and models. And the problem we were facing with the event we were planning was that - that the scope of the cars ranged from '69 up to the current model. Some people had changed tyre sizes, some people had changed dif ratios, and all of those things affect a perfect odometer reading."

Mr McVean agreed that on Day 3 of the route instructions there was no mention of the right-hand sweeper prior to the control point.

Mr McVean was asked whether there was any difference in the uniform worn by marshals showing people that they were coming to a check point to the uniform worn by marshals cautioning drivers of hazardous locations. He gave the following evidence:

"Yes we had - we had some bibs made from a - an orange reflective-type material and generally if you were a flag marshal at a spot other than a control point you wore your civvies, and then over the top of that you had our supplied bib, like a main roads workers, that was orange and it had a - the word marshal across it, spelt incorrectly."

Mr McVean said that Mr Takahashi did not speak to him at the evening briefing on day 2 seeking clarification of the term "verge of the road." He stated that he was not present when Mr Takahashi was told "It's very hard to find the control point so watch out."

Mr McVean was asked why it was that at the Aileron checkpoint there were 4 shut-down zones and only one at Stuart Well. He was unable to give a reason. ??

Mr McVean was asked whether he considered putting up signs identifying the control point some time prior to arrival at a control point. He stated:

"We believed - considered it - it may have been considered, I can't say that it was and then reject it, but the things that we would've considered was not only the sign but was the flag marshal and the - the road notes as the general sequence that we were following. But I can't say that we've looked at it and then rejected it, no."

It was suggested that each control point be equipped with a high density dome light, mounted on a 3 metres high folding tripod, and powered from the controllers car battery. Mr McVean did not believe that was considered.

In response to a question as to what devices, if any, that Mr Fraser's vehicle (the pace car) had alerting the public to the fact that the Cannonball Run was in progress, Mr McVean gave the following evidence:

"It was a Nissan 300ZX, it drove with its headlights on, it was distinctively signed with 'pace car' across the windscreen, and it was his practice, as it was mine, to on-coming traffic, to blink the headlights. On the back of it which was - for the benefit of competitors, it had a series of three lights. One was a green, one was an amber, one was a red. They could be activated from inside the car. Green meant to the competitors following that the road ahead is clear and you may pass, the amber light meant, don't pass under any circumstances, and the red meant, you must stop.....It was his job to stay ahead of the field, correct yes. There was also a police car on each morning that left ahead of the field and generally stayed in the top five or six cars. ?? where was it??

Mr McVean told the Court that the run was accompanied by stewards from Cams. One of the functions of those stewards was to ensure that the event complied with the Cams' requirements. Mr McVean said that at no time prior to the accident did any of the stewards raise with him the issue of flying finishes. He said that none of the stewards made any complaint relating to the failure of participants to wear helmets.

Mr McVean said that he received no complaint or comment from any of the stewards to the effect that the event was not being run in accordance with Cams requirements.

Mr McVean told the Court that there were 13 police vehicles accompanying the event. In addition there were 31 official vehicles.

Mr McVean gave evidence of approaches he had made to road transport users. He stated:

"We had had several discussions with the Road Hauliers Association and the bus

people. This came as a result of direct contact we made an executive of one of the, the major hauliers that comes up there. We just asked him to advise us when trucks went through so that we could place ourselves in different parts at different times. As a part of the process on the route surveys we also stopped and talked to the truckies themselves, to warn them that the Cannonball was coming through and general find out from them when they may be on the highways."

McVean said that he had made adjustments to start and finish times to take account of road train movements. Exhibit 34 was a document relating to movement of road trains.

Mr McVean said that no questions were raised with him by the stewards concerning speeds on the open road sections.

During re-examination, Mr McVean told the Court that he did not obtain the same information for buses as he did for road trains. He said: "...not as detailed as this. We relied upon advising them where we would be and hoping that they would adjust around us."

Mr McVean said that he never expressly told Cams that he was proposing to have a stop finish.

(3) THE EVIDENCE OF DOUGLAS SCOTT FRASER

Mr Fraser's statement was exhibit 37 in the coronial proceedings.

Mr Fraser told the Court that he had been involved in long distance rallies since 1989 as a competitor, navigator and in an official capacity. Those events had been run under the auspices of Cams. He said that his main experience was in the marketing public relations area.

Mr Fraser said that there had been some discussion about finishes in the Run with Cams. He was quite sure it was mentioned what type of finishes were proposed in the Run.

Mr Fraser did not agree that the marketing of the event concentrated on the high speed

road opportunity available to competitors. He said:

"We were trying to attract quality motor vehicles into the event and motoring enthusiasts who enjoyed their motor vehicles and would like the opportunity to get out and exercises those cars, essentially."

It was put to Mr Fraser that the event was really "to attract all drivers of fast cars ready to accept the challenge of one of the greatest car races of all time," He replied:

"I think that that would be certainly promotional terminology that one would use in publicity, where one is trying to paint a colourful picture so that people will inquire about the event further. And a document like that is designed purely so that people will look at it, hopefully, that they will like what they read in it."

Mr Fraser said that he was not involved in the driver screening process. He was only involved in the marketing of the event.

Mr Fraser said that the marketing approach in the brochure that he had designed was intended to appeal to people with performance cars who might inquire about the event. He added that care was taken in the marketing of the event to not call it a race, but rather a run.

Mr Fraser was asked what was meant by the words "race against the clock" or "race the clock." He stated:

".... that a time was set for the competitive sections, and the competitors would be required to meet that time."

It was put to Mr Fraser that the competitive sections required the maintenance of a particular average speed. Mr Fraser said:

"Yeah, and I think the wonderful thing about the Territory highways of course is that, basically, your average speed is your speed, because there's - on these sections you're not going through towns or you're not being held up by any

significant way, so your average speed is basically the speed that you're - that you're cruising at."

He agreed that would depend upon the particular circumstances of any particular car on the road at any particular time.

Mr Fraser gave evidence of there being continuing negotiations between Racecase and Cams on various matters. It was Mr Fraser's understanding that after Cams had proposed a maximum average speed of 140 kph, Mr Moffat and Mr McVean would continue to negotiate the speed with Cams or further discuss it.

Mr Fraser said that the Department of Transport and Works did not show Racecase any statistics relating to traffic use. Nor did the Department discuss specific statistics with Racecase.

It was put to Mr Fraser that the Department advised that traffic use was light. He gave the following evidence on the point:

"Certainly, they were very familiar with very, aware of what the traffic use was on the Stuart Highway. That was their job. They've been doing it for a lot of years, and they - what they did advise us was that the period of time that month of the year would be a good time to conduct the event because traffic usage was quite low."

However, the actual statistics were not obtained.

Mr Fraser was asked whether Racecase timed the event to avoid meeting a particular convoy of trucks coming up from Adelaide through Alice Springs to Darwin. He stated as follows:

"Yeah, we certainly researched it. It turned out that when our competitors were on the road were at such times when the trucks weren't. They were in a different position to where we were, in relation to the highway. When they did cross, when they were, in relation to the highway. When they did cross, when they were

coming north and we were heading south, when they did cross us, it was at night time; we were off the road."

Mr Fraser said that apart from that particular convoy, Racecase did not have any figures on what heavy vehicles would be using the road during the event. He was asked whether any such information was sought. He said:

"We sought from the Department of Transport and Works information which they provided for us. We didn't seek statistical detail."

The only information sought and obtained related to general traffic density.

Mr Fraser said that on the morning of Day 3 of the Run he had moved Mr Kimber back from his position further up towards Alice Springs. He told the Court that Mr Kimber was first stationed, in terms of the commencement of the lay-by about 100 metres or so towards Alice Springs side. Mr Fraser's recollection was that he moved Mr Kimber about a couple of hundred metres, ie instructed him to position himself 300 metres up towards Alice Springs.

Mr Fraser's attention was then drawn to a sign located prior to the lay-by. His recollection was that the sign said "In".

Mr Fraser was asked why there was no sign at or about the shutdown zone (ie approximately 500 metres before the checkpoint), warning of the checkpoint. His answer was: "We had Peter Kimber, the flag marshal, was there.....Competitors had in their road notes specific details that the checkpoint was coming up. There was a flag marshal which would have - which would have alerted them - which did alert them to the fact that the - that this was a caution area. Reference to their road notes would make no doubt in their minds that that was - the checkpoint was coming up. Another thing about that control point is that the - the - the distance, the visibility of the control point could be seen from, I would estimate, about a kilometre away. There is - there is no doubt that there - there - you couldn't miss it, that it was in your route notes, your navigator is advising that it's coming up and it - and it really appeared out of the desert sort of shining very brightly. You could see it from a great distance."

Mr Fraser gave evidence that he certainly did not tell Mr Takahashi that the checkpoint was difficult to find. He added: "...but I may have said to just make sure that they keep an eye out for it." However, he did not recall having a conversation with Mr Takahashi in that regard.

The following evidence was elicited from Mr Fraser during cross-examination.

Mr Fraser gave the following evidence as to discussions with Cams at the Brisbane meeting late 1993 about how finishes would be conducted in the Run:

"I couldn't tell you with - with any accuracy. What I could - what I can tell you is that - is that, you know, between the two of us we - we - we gave some - you know, a descriptive of how we intended it to - finish the - the Special Sections and how we intended to conduct the Flying Mile. I - I - my recollection is that it was Mr Nichols who - who gave us a bit of descriptive on - on how dirt rally on tight courses over - over short distances at high speed, how they conducted their finishes. And after that it wasn't raised as any - any - it wasn't ever raised as an issue. It was really just an exchange of some information. We had been working at that stage also on - on putting together a - a bar coding system trying - attempting to put a computer and bar coding system so that when competitors came through the control point, they would - their - we would be able to read the bar - a bar code which would denote their vehicle and take information down on the computer. Communications problems probably were the most difficulty - difficult aspect of that over long distances. But we discussed that - I - I believe that we discussed that at - at the meeting in - in a sort of a brief - it was certainly a germ of an idea at the time."

Mr Fraser was then asked what he recalled that he had personally said in relation to the proposed method of finishing Special Sections at the meeting which took place late November 1993. He stated as follows:

"I don't recall what I personally said. Mr McVean and myself, between the two of us, we - we discussed or - how we proposed to do - to do the finish of the Special Sections, and I believe it was Mr Nichol who sort of again discussed - you know,

other alternatives that are utilised in different types of motors sports, and it was really just an exchange of ideas without going any further."

Mr Fraser denied that no mention was made of stop finishes, as distinct from flying finishes, at the meeting. He added:

"The - at - at that meeting we - we did discuss how we were proposing to do our stops. That was prior to discussing anything about the bar code and the - and the bar code idea wasn't flagged as a - as a major issue at the time, we still had some research to do into whether we could achieve the technology in doing that. But it was always a stop finish that - whether it was going to be a manual stop finish or an electronic stop finish, it was always going to be - well, that was the way that we had it - explained it."

Mr Fraser was asked why maximum speeds were not provided to the competitors in the route instructions. He replied as follows:

"I think the main reason of - of avoiding that is competitors get a false sense of - if - if you put a maximum speed in, then they're more likely to try and achieve that than they would to make their own judgement on - on what - you know, how they handle the - that particular area on the road."

Mr Fraser was not able to say when Racecage had changed it mind and decided not to put maximum speeds on the route instructions.

Mr Fraser was asked to explain the difference between the Aileron checkpoint which had 4 shutdown zones and the Stuart Well's checkpoint which had only one shutdown zone. He gave the following explanation:

"the - the Aileron control point was the first time that competitors would experience a control point in a lay-by, so it was very important to familiarise the competitors - you know, with what to expect with a lay-by type control point.

The - the Aileron - the Stuart's Well control point was also - the visibility of the

Stuart's Well lay-by was also much more distinctive."

As to why he moved Peter Kimber, Mr Fraser said:

"I came through - when I came through, I came through as a - as a competitor would with the same eyes, if you like, as a competitor would have.

Yeah, with the eyes of a competitor. Each time I had - I had been through previously, obviously, there wasn't a control point set up, so it was always going to be this was the first time that - that anybody had seen the control point from the view of how a competitor would view it. I had a very clear view of the control point from a long distance back. I believed in my opinion that if I moved Peter further towards the - towards Alice Springs, it would give an even longer distance sign that the control point was coming up."

Mr Fraser gave evidence that he could see the control point at Stuart Well about one kilometre back. However, he added that he was expecting the checkpoint.

Mr Fraser said that at no time prior to the accident did the Cams' stewards raise any matter of concern with him. Mr Fraser stated that he did not receive any complaints from competitors about the adequacy of route instructions. Nor did he receive any complaints from the police during the Run.

Mr Fraser's recollection was that the first cones leading into the Stuart Well's control point were of the jumbo size. The shaft of the flag protruded from the cone about 10 to 12 centimetres. The total height was about 1.50 metres.

(4) THE EVIDENCE OF ALLAN GEORGE MOFFAT

Mr Moffat had been involved in organising circuit events, but it was fair to say that he had never been involved in a event like the Cannonball Run.

It was put to Mr Moffat that there was no requirement to demonstrate any particular driving experience in order to compete in the run. He gave this evidence:

"That's not quite correct. The screening process that all applicants had to go through, they were certainly asked who they were; where they came from; how many years have you been driving; what kind of experience have you had - a number of them had been club racers, a numbers of them had been in rallies of various weekend pursuits. I wouldn't like to leave you with the impression that they were just off the street and had never seen what a car looked like."

He was almost certain that all entrants were asked what kind of experience that had at high speed runs in their vehicles.

Mr Moffat did not consider that there was a minimum background for entry in the event. He added:

"I certainly didn't want teenagers that were borrowing dad's Ferrari, and, as it turned out, the age of the applicants was proving to be one of the more comforting aspects of the pre-selection in that everyone was of a sober age and showing a businesslike approach to the entry."

He stated that the first parameter of the selection process was the vehicle itself. The less performance - orientated the vehicle, the more likely it would be relegated to Category 3. The second parameter was the age of the participant, and past experience and maturity.

Mr Moffat said that Mr McVean had taken most of the enquires from potential entrants. He said that it came basically down to Mr McVean's impressions of maturity and experience. Where he had a query, Mr McVean would consult Mr Moffat.

Mr Moffat seemed to be saying that entrants were asked whether they had any defensive driving experience. However, Mr Moffat was unable to tell the Court how many had done defensive driving courses. He estimated 30%.

Mr Moffat stated that the Run "was unique in the manner that it was unfolded." He went onto say: "I think one of the sad aspects of the pre-event probably was the linking to the American version, and it was linked to the American version because that was the version that had Hollywood footage, and that was unfortunate." He stated: "the name was

chosen because very much it was a unique event and totally different than anything else that we know in motor sport terms." Mr Moffat said that he wanted to dissuade people drawing any associations with the notorious American "Cannonball run." He said that the Run was not planned as a "race". He said that the name of the event encapsulated a long distance, endurance road event. He stated that the event "involved a low degree of competition and a high degree of cruising down the highway."

He agreed that there was a element of competition in the competitive stages of the event. He added: "they were about competition, but almost 60 percent of our competitors weren't interested in it and were, in effect, non - contestants, they just went through the motions."

There were "competitive completion times" in the competitive sections. He said:

"Competitive was taken in the context that you were against the clock, you were being monitored now, if you like you were in the event, this was the section that required you to be in the event, you weren't cruising and a time was set for the duration of that section and, depending what category you were in, you aimed for it."

Mr Moffat stated:

"But bear in mind, I think, with all respect, one of the things that perhaps hasn't been grasped as well as we would like it to, as organisers it mattered nil to us who won the event, as organisers we were only concerned about the welfare of the participants, and, as organisers we were very, very strong, if you like, on ourselves about bridling the event."

Mr Moffat said that the task at hand had been set at a mundane level.

As to doing the sections within the times set Mr Moffat said:

It - it wasn't, in my experience, necessary to go very much over the average that you were set. You could give yourself that - that luxury once they calculated what

they wanted to do. The environment was such that the car would run with minimum stress to anyone, and the ability to concentrate on the few twists and bends that may have been in place were quite minimal and, as such, this hard to grasp, this sense of averaging, when, if a participant went for just even a few hundred yards above that window because he had sight to the horizon, there wasn't another car in sight, there was certainly nothing coming, there was nothing on the roads, the credit, if you like, that that built up into his time was enormous."

Mr Moffat agreed that other public traffic on the road might slow entrants down and therefore affect their average speed. He stated as follows:

"That would have a drastic effect on his average, but, by the same token, if I may, we chose sections of the highways that were just wonderful, to say to the least, where this possibility of coming up on any kind of traffic, any kind of traffic that you want to imagine, the ability to pull out and pass and get on with your job was very, very strong, it was quite capable. I dispute the concept where we have this southern levels of traffic where you are just up against one headache after the other and you're watching your time and you're fretting away and you never make it. I don't - I can't accept that.

Well, I disagree that he has to speed up a lot, as you're inferring, speed up a little bit, sort of a half mental calculation. Some of the competitors had lap-tops and they knew down to the last millisecond where they were, they were reading it in reverse; they were very happy that they knew what the time frame was and how that average could be manipulated, if you like. But one of the aspects of choosing the month of May was that it was the lightest month of the year for traffic, and, in the surveys that we did, even in non-May months, the level of cars that we came upon was just infinitesimal."

Mr Moffat agreed that account also had to be taken of vehicles coming in the opposite direction. He said, however, that was a matter of traffic density. Mr Moffat told the Court that he did not need to seek figures from the Department of Transport and Works on traffic density. He said:

"....because we were advised by Transport and works that May was by the best month of the year. It was really only a question of what week in May did you want to go for."

He certainly believed that the impact of traffic density on the road had been taken into account.

He said that Mr McVean was handling enquires of bus operations concerning timetables and frequency of road use. He then gave the following evidence.

"What I recall is that the bus operators were certainly informed of the event, in fact were - through one of the Tourist Commission meetings there were people that represented or had interests in the bus lines, and they were certainly aware of what we were advocating as a plan for the event, and I recall no criticism of what we were attempting, and the fact that we weren't conflicting with their night-time runs seemed to take already 50 percent of the problem away."

Mr Moffat told the Court that the maximum average speeds for the competitive section had been determined about a week before the event.

Mr Moffat stated that any tension between safety and providing competitive sections in the event was never a difficulty in his mind. He said:

"I was always comfortable from the first survey that the bridle that was in place was going to be more than enough....when I drove the car I wasn't. A Moffat, race driver, I was A Moffat a normal person, and I just let the road come to me and the car go to it, and that was - was the time that fell out, if I can use that term."

Mr Moffat agreed that Cams favoured lower speeds for the event. He said that he "couldn't agree with a limitation that was taken out of the rule book in their office with no reference to what the environment in the Northern Territory was."

Mr Moffat agreed that people like Mr Keys, Mr Nichol and Cams had a great deal of expertise in relation to road events.

Mr Moffat thought that the Cams' view on speed was too conservative. He was not prepared to accept the 140 kph limitation. He said: "...it was a figure that, quite frankly, you would do in a Volkswagon." He went onto say: "it would probably have made it a non-event. By that I mean the event would never have taken place." He added that the speed proposed was not practical because of the vast distances to be covered during the Run.

Mr Moffat was asked his opinion as to what underlaid Cams' specification of speed. He stated: "It was the regulation in the international rule book that had it at 110 plus 20 percent." As to what underlaid the specification of speed in the rule book, Mr Moffat said: "International dirt road rallies."

He suggested that Mr Keys and Mr Nichol "....weren't capable of going against the printed bible that was in their office."

Mr Moffat stated to the Court that he did not write back to Cams stating that the speed limitation was unacceptable. He said he could have possibly spoken to Mr Schenken about the issue of speed from time to time. But he did not tell him that he had received a letter from Cams imposing a speed limit of 140 kph which was unacceptable.

Mr Moffat said that he wanted Cams' approval, and had told the Government that such approval would be sought.

Mr Moffat gave evidence that he had told Mr Schenken something to the effect that he had brought back the speeds. He was asked about what he had brought them back from. His answer was as follows:

"I can't tell you precisely. All I can tell you, that it didn't apply to the averages. The one facet that Mr Schenken was able to sell me on - and I don't want to sound as if I had to be sold on everything, but he counselled me at one stage. Look, I respected him for being a Formula 1 driver, I knew that he could count to 10, and valued his opinion. His indication was, 'Be careful when you're up in the 200 zone of thinking what people can do. Be careful. Don't set an average' - he had the mistaken idea that an average of 180 meant that you had to travel at 250. I, to

this day, believe he is mistaken on that comprehension. We are not all mathematicians. But what he did counsel me about was, 'You don't need people in the 200 strata and, on that advice, I later, in consultation with my associates, we looked at what were the times we were doing. But it was not an average, it was simply pulling back, in Tim's mind, Mr Schenken's mind, this illusion that we were going to be, to put it candidly, closer to 300 than we were going to be at 200.'

Mr Moffat said that it was agreed that the letter of 3rd March would not be replied to and "a bit more selling was needed in Melbourne. He spoke to Mr Schenken in Melbourne. Mr Moffat saw more need for him to explain what the event was about.

Mr Moffat said that he was never a party to discussions with Cams on the issue of whether there should be a stop finish or a flying finish.

Mr Moffat appeared to agree that there was a time when it was proposed to have the route instructions contain maximum speeds. He said that it was possible that that proposal was current as at March 1994.

Mr Moffat agreed that reading the road survey would convey the impression that it was proposed to have event - imposed speed limits at particular places. Mr Moffat gave the following evidence:

"We were asking for it. We were also asking for flag marshals on points. I can recall this now in my mind, that one of the dangers to safety, one of the precautions that we tried to put in place - we didn't try to put in place, we did put in place - was this problem where people that would be on a given stretch of road for many, many minutes, half hours at a time, and the tendency to say, 'Oh, hum, there's nothing really there. I got down the road so far. I'm okay.' and there is tendency, subconsciously, not to lift your foot. And wherever I experienced a corner that was testing of any nature, I was super - erred on the cautious side, let's have either flags or, at a minimum, the notes and the suggested speed."

Mr Moffat seemed to agree that the route instructions did not refer to speeds at all except

in relation to shutdown zones, and except in relation to restricted areas where there were speed limits imposed by the law. He said:

"The competitors were aware that if marshals were on the road they weren't there standing in the sun for their health, they were giving them a guide to a potential cautious, be a little bit more cautious."

Mr Moffat agreed that the specifications of a time to complete a special section did not specify either explicitly or implicitly any maximum speed, except on the days when there was an event imposed speed limit for the day. He said that occurred on the first day between Darwin and Katherine and on the trip back. There was a trial event-imposed speed limit of 180 kph. When asked why a limit was imposed on the first day, Mr Moffat stated:

"It was imposed because as organisers we had the benefit of hindsight before the event. By that I mean, in the non-glibbed fashion, we had done a number of surveys. We were aware of the relatively twisty nature of the road between Darwin and Katherine, vis-a-vis what could be expected on the following days. We were also aware that people were coming up to a very strange never-before event and as part of our bridle - if I can continue to use the term, which I wouldn't like outside the court, for the benefit of future advertisements - it was a way of controlling people's introduction to the event. No car on the field was supposed to be doing more than 180 on the first day from the Darwin wharf to the Katherine Showgrounds."

As to why a similar limit was not imposed on other sections he said:

"There was no need to be as severe, knowing the nature of the highway from Katherine South."

The limit on the return trip was brought in because of the accident. Mr Moffat stated: "The accident scared everybody" Mr Moffat said that there was no connection between the speed limit imposed and his perception of the cause of the accident. Amongst the factors that lead to the limit being imposed were: the fact that on day one such a limit

had been set, that in the circumstances the limit was a responsible thing to do, and the perception that it was necessary to show that the organisers were "well and truly under control."

As to any reason why a speed limit of 180 kph could not have been imposed on the second and third days of the Run, Mr Moffat said:

"Well, in proportion to the application of that exact number being the number, 180, for the first day, based on the twisting nature, a strong percentage of the road between Darwin and Katherine being of a twisting nature. Certainly from Katherine south on day 2 and then from Alice Springs on the third day, twisting wouldn't be description of the roads at all. And that number taken in-taking the road environment into place, could quite easily have - well, would have almost - it would have been logical for it to be a higher number.

Well, one of the overriding parameters of the whole event was that people would run at a speed that was comfortable to them."

Mr Moffat said that he had never considered the alternative of having a flying finish to a stop finish.

It was put to Mr Moffat that had there been a flying finish so that Mr Kabe would not have had to deviate off the highway to have his time recorded, the accident would not have happened. Mr Moffat's reply was as follows:

"It's possible to say that this exact accident wouldn't have happened, but our fear was that coming into an area where a lot of people were - this is on the overall event - a lot of people would be congregating to see the action of the event. We didn't want people tearing into the townships where we were stopping where we had the benefit of the 100 kilometres to the 80 kilometres, superintendent's radar police and then a nice pull-off. Admittedly, here at Stuart River we were out in the open but, in principle, the concept of a flying finish was not adopted for the reasons I've said, that you can still have an out-of-control situation where the bloke is beating that last second to get to that point, and then in a shorter distance - and

we've had all sorts of evidence of people saying that you can't have a cool-down of a mile, it has to be within about 100 yards, I believe Mr Nichol's said, for communication points. That was too dicey for our way of conceiving the event to unfold."

Mr Moffat stressed that consistency was important, and if flying finishes were to be adopted, they had to apply everywhere. He seemed to be saying that there were no practical reasons why flying finishes could not be universal.

Mr Moffat was asked whether with the benefit of hindsight, there was anything significant that he would wish to have changed in terms of the organisation of the Run. He said:

"I think, without a shadow of a doubt, we would take a leaf out of the conversations regarding prior - better prior training and would probably specify a - a funnel of participation that you went through, some very serious regimentation which was much more than getting handed a licence and a, 'Well, we'll see how you go in a few years time', we want to know now that you had some - more - I will make the comment, you cannot teach someone how to drive, you can only inform them the best way in which they should go about trying to protect themselves. It is one of the things you learn. It's like getting on a bicycle, if you can remember that; you got put on and sort of thrown down the highway, and you either stayed on or you didn't. Driving a car is very much the same. One of the things that did comfort me from the very beginning was that the calibre of people that we were attracting were, first of all, could afford to come, a not an insignificant factor. They had wonderful machines that they were very proud of, and surely, maybe, I believed, incorrectly, but I did believe they had a strong sense of self-preservation. But in hindsight and in answer to your question, I believe that most significant suggestion to any future event could be a stronger, very much stronger regimen of pre-diagnosis, if you like."

Mr Moffat said that the Targa Tasmania guidelines in terms of the driving experience of entrants "sounded very good."

As to other matters for improvement he stated:

"The other taken in that context, Your Worship, not wishing to pre-empt what you'd say, if you are asking me for my opinion on how we would enhance a future event, it's very clear that we need more aircraft in the air. We need a AWACS type of plane where the radio communications between the superintendent and the organisation could be improved - by that. I mean that we would be able to bounce off that beam that a other plane or some device, satellite device, had in it. The superintendent was very much more comforted when he had the plane in the air on the way back. It would help monitor and make any serious rules that the organisers were putting in place, would give it much more bite, that the competitors would believe that they might be able to be seen from the air a lot more. And given the superb job that the Department of Transport and Works have already done, there's nothing like having done something well; you just go on doing it better. I can't see that more resources of manpower to increase the presence along the highway, even if there wasn't a side road, where it was just a comfort vehicles for the competitors going by, that they would know that if they had engine trouble or broke down or even had a flat tyre, 'Yeah, well, look, it's only two kilometres back to that last truck we saw parked by the side of the road'. If they sat there and did nothing but just waved to the competitors, I would think that would be a comforting and smart move. I would instigate a medical report, that all competitors would have to instigate a medical report."

When asked whether he would vary downwards the average maximum speeds, Mr Moffat gave the following evidence:

"I couldn't answer that specifically at the moment. I would want to drive the route many more times to familiarise myself with better topographical features. I'm sure there are - everything along the route can be improved with more time spent on it."

He said that he could not give a determination at the moment on the use of flying finishes.

Mr Moffat gave the following additional evidence as to why a maximum speed limit was not imposed on days 2 and 3 of the Run:

"Yes, there was and that deliberate decision was based on the fact that the - the highway either was of, if I can put it in quotes, 'no concern'. It was so open as to be an area where a maximum imposition was not necessary, but if - if I can bring you to my comments where I was saying the whole concept of the event was to bridle the field and the then average speed was meant - not - a little bit more than a guide, you - you had to achieve that, and you musn't go too fast or you were penalised double points. So the thought of someone just leaving a control and foot to the floor and then parking it somewhere didn't come into anyone's thinking. They were all very aware that it was double points if you came in too early. There was no point in going flat out if you had the capacity to do that. I might add there were very few cars that had any capacity to go flat out."

Mr Moffat told the Court that Mr Fraser's pace car left 15 to 20 minutes before the special section commenced. He said that there were 4 more pace cars. There were 3 cars interspersed through the run, with one coming up behind.

Mr Moffat was asked why he took the helmets from the Ferrari, He replied: "I didn't want them to be souvenired."

The following evidence was elicited from Mr Moffat during cross-examination.

Mr Moffat did not agree that it would be desirable in future such events to have flying finishes. He said that for the reasons that lead Raceage to run the event the way it did. He recapitulated his reasons as follows:

"One of the things that hasn't been told to you about the flying finish is that that's a euphemism for a term that should be more accurately stated as a "flat-out finish". It's also a development from the rally code that gave that type of motor sport a window of excitement where people could expect to see something happen, because of the nature of driving around in the forests and mountains and things of that nature around the world where these events happen. The - the finish was always a very big deal to put it mildly, and there is a little bit of Hollywood involved in this type of suggested FIA flying finish.

MOFFAT

Because we had planned the event to take advantage of the gas stops along the track, along the highway, to essentially stop where there was limited civilisation in the Northern Territory, and I don't say that in a demeaning way, I mean where there was actually a truck stop or a little store and a petrol station. It wasn't our plan to have people arriving in that environment in an unrestricted fashion. It was our plan to use the - the slow-down process that was given to us by the rule of the road, ie, the 100 sign, the 80 sign, Superintendent's cars that were a very real threat to the competitors to slow down under radar - the shutdown zone - and pull in to a stop. What also added to the significance of doing it that way, the whole concept of this type of finish is you have your competitors trying to eke out last millionth of a second on their times. We set in a three minute window. In rally terms that's a light-year of difference - a light-year. It would be - we would've been accused of, you know, just kindergarten stuff compared to the way, the professionalism, that these fellows operate with their splits right down to a millionth of a second. And they are moving at that point. They have two people that are expected to stand close to that point to get the actual click, and then the additional people that are expected to - to be in control when the car physically stops within - the document actually says, couple of hundred yards. I would like you to picture that scenario with the number of people that were crowding around our finish areas."

Mr Moffat did not agree at all with the suggestion that Mr Kabe was confused as to his location.

Mr Moffat believed that the route instructions were sufficiently detailed to meet the varying intelligence of competitors.

Mr Moffat was sure that the fact that a flag marshal was warning of a shutdown zone had been communicated to competitors during briefing sessions. He agreed that the route instructions did not indicate the whereabouts of marshals.

Mr Moffat told the Court that had he been in Mr Fraser's car on the morning in question he would have posted Mr Kimber in the shutdown zone.

Mr Moffat told the Court that it was he who had made the decision not to require the wearing of safety helmets during the special sections. He said that one of the reasons for that decision was his view that once people donned safety helmets they might consider themselves somehow in racing mode. Mr Moffat gave the following basis for that view:

"All my career, and there are those that would argue, but certainly not anyone that knows me personally, that I was a very sane and normal person prior to any racing event. The procedures I adopted in getting into the car, belting myself in, and putting the helmet on and familiarising myself with the office, so to speak, transformed my zeal to do the job that was required, and I use the word 'transformed'. It gave me a feeling of comfort, just the extra tightening of the belt, putting on the gloves and fastening my helmet, gave me the courage to go on and do what I had to do. I didn't want that kind of - which I freely admit came naturally, I'm only analysing with the benefit of now being retired, that this was taking place. I didn't want ordinary people who had never even, perhaps ever had a helmet on in their life have this wave of extra qualities come over them, and feel that they were then racers. The whole concept behind the Cannonball event by the directors and staff of Racecage was always to keep it a controlled motorsport event.

The comfort that that device gave me as a racer, as a professional race driver, allowed me to take a car to its absolute limit. There is no way we wanted anybody in the Cannonball Run on the limit, overall, for 4000 kilometres. I can also add to one of the factors very strong in my mind, and I doubt whether many participants in the court would have any difficulty having seen television pictures of drivers getting out of their cars after a stint, looking very much akin to these pylons here, totally blistered, totally red, totally worn out, totally hot. And the wearing of a helmet for long periods at a time was a very very tough job. They're heavy, your head starts to sway. If you put the 10 top race drivers in this room today and did a neck muscle test on them you would be amazed at how strong their necks are compared to any other facet of their body."

As to the issue of fatigue in wearing safety helmets Mr Moffat gave the following evidence:

"In the longer distance races we developed, as a result of some NASA technology, we were able to get a hold of a thing known as a cool hat, and to stop the temperature of your head going off the clock it was a device like a shower cap that was connected to a refrigerated cooling device which, like a normal refrigerator, pumped a cool liquid through your hair and in races where the driver was expected to be in the car over two hours, and by over two hours I mean upwards of four hours which is the international maximum, this considerably kept my fatigue at bay."

Mr Moffat also adverted to the difficulty in communication between driver and navigator occasioned by the wearing of safety helmets:

"That would go without saying because no one would spend upwards of 5 or \$600 dollars on a helmet without buying the latest and greatest, and the latest and greatest is the type that was known as a full-face whereby it's practically impossible to talk through it, there is only just a little gap in front of your nose, without getting elaborate radio communications as they do in the international rallies. It was totally beyond the concept of what we proposed at the level that Cannonballers would participate in."

For all those reasons Mr Moffat took the view that helmets ought not to be mandatory for the special sections.

The wearing of safety helmets was "at the option of competitors, if they chose" during the flying mile challenges. The last series of rules and regulations provided that the wearing of safety helmets was recommended during the flying mile challenges. Mr Moffat said that at its strongest he recommended helmets for the flying mile challenges. As for the special stages he said:

"It was a recommendation, if you had one, by all means bring it, by all means use it, if in fact you wanted to use it in the special stage that was quite okay, but it

was not mandatory."

Mr Moffat agreed that the maximum speed of 180 kph for day one of the Run could have been included in the route instructions, but it was not necessary.

By way of explaining what he had meant when he told Mr Schenken that the event was pulled back, Mr Moffat said that it had been detuned ie. the averages required to meet the set times had been heavily discounted.

Mr Moffat said that "we were not responsible to Superintendent Ey for a definitive maximum speed." He added: "This was our own responsibility which we took upon ourselves" Mr Moffat also agreed that it was important to give the police an accurate picture as to the times which would be set and as to the speeds that that would require.

Mr Moffat told the Court that some 10 days before the event he knew the actual times that were to be communicated to the competitors. He had delayed the availability of the times so as to avoid any one gaining an unfair advantage by practising the event. He added that the route notes were only handed out nightly before the next day's run.

Mr Moffat denied that he was reluctant to give the times for the particular event after the accident. He was of the view that Senior Constable Potts' requests for the times had been complied with.

Mr Moffat stated that he had a "fleeting vague recollection" that Mr Bell had asked Mr McVean if one of the stewards could travel in the observers' aircraft to watch the event from the air. Mr Moffat had no recollection of Mr Bell personally asking him to allow one of the stewards to fly with Mr Perkins. Mr Moffat did not recall telling Mr Bell that the aircraft was not to be made available to Cams stewards. He added that it was unlikely that he would have said such a thing to Mr Bell.

Mr Moffat said that the decision to use stop finishes in the event was a collective decision by all the organisers.

Mr Moffat told the Court that had a vetting process similar to that recently proposed for the Targa Tasmania been in place in relation to the Cannonball Run, Mr Kabe would have been accepted in any event with his qualifications.

Mr Moffat said that he had not told Mr Takahashi that the checkpoint was difficult to find. He said that he was not the official to whom Mr Takahashi had made a request for earlier delivery of the route instructions.

Mr Moffat said that in terms of identifying a control point he preferred a marshal waving a flag to a stationary sign ie a FIA control sign.

Mr Moffat stated that he did not consider the use of lights at control points.

Mr Moffat said that no complaints had been received from any of the competitors as to the route instructions. Mr Moffat said that at the end of the day he was content with the instructions which were provided.

Mr Moffat was also content that the lay-by and checkpoint were safely positioned.

Mr Moffat told the Court that throughout the event the emphasis was on safety control.

It was put to Mr Moffat whether in hindsight any safety precautions could have been taken to minimise the deaths of the two marshals. He gave the following evidence:

"In - in hindsight only, Your Worship, you would possibly, in the benefit of the catastrophe that took place, establish what we refer in moderating terms as - as a chicane, which is a: in left, right, virtually like going through a shoe box. But it was always our - our belief in - in the planning, that because the regimen of being slowed down off the highway - and we're not making any apologies for the fact that the cars may have been running at a considerable pace on the highway - when they came through the 100 to the 80, through the radar, and were under instructions that, 'You're now checkpoint ahead', we consider that anybody would be in danger, because everybody was in this decompressed zone. The danger with the flying finish concept, which was discounted out of hand immediately, I might

add, was that people coming through at high speed in the terms we're referring to now might have even made the rally standards look a little - little shabby, and the thought of trying to pull all of that up in some form of a control area, I wouldn't care whether you - you had it at nine or 1000, metres away. That was horrific sight in our minds in preliminary planning. But it was this concept, whether we should have been smarter or not, that we were in a shut-down zone, we had a shut-down mentality, we had all our forces to bear, that brought people to think this way, and that really as the car progressed through the witches hats to approaching the marshals they would virtually be doing about five kilometres an hour. Any you don't really impose a regimen in your thought, that somebody's going to be doing even 50. To hit this lay-by at 60 and drive down with a little bit of extra aggregate or not - it's actually of no consequence - and to pull up for the - the two goal posts and get checked off was really, without trying to be glib, with a minimum of fuss."

Mr Moffat said that at the outset of the event competitors were issued with a document called "Guide to Competitors." That guide indicated that competitors would be directed into an end section control point either by reference to the route instructions or by a marshal.

THE CAUSE OR CAUSES OF THE ACCIDENT

The Direct Cause

The direct cause of the accident was driver error on the part of Mr Kabe. That conclusion is clearly supported by the evidence of the two expert witnesses, Senior Constable Potts and Mr Warwick Kiernan.

Each witness gave evidence identifying the driver error and the circumstances surrounding it.

Senior Constable Potts gave the following account:

As Mr Kabe approached the checkpoint he braked heavily and veered sharply to his left onto the lay-by. Almost immediately the Ferrari side-slipped to the left. Mr Kabe applied a steering correction, but overcorrected with the result that the Ferrari underwent a rapid

weight transference to the right. This caused the Ferrari to move off the lay-by onto the Stuart Highway. Once on the Stuart Highway, Mr Kabe applied a second steering correction to the left. This correction induced a yaw of the vehicle in the opposite direction to the initial yaw, rotation now being in an anti-clockwise direction. The Ferrari, now being in a total broadside travelled back onto the checkpoint on collision course with the two support vehicles parked at the checkpoint with which the Ferrari eventually collided.

A similar account of the movements of the Ferrari prior to the collision is given by Mr Kiernan. (See page 2, paragraph 3.2 of his Report, Exhibit 14).

Senior Constable Potts was of the opinion that Mr Kabe had entered the lay-by at a minimum speed of 86 kph, which he determined was the "critical speed". The Constable defined "critical speed" in the following way:

"The sideways centripetal force that accelerates a car towards the inside of a curve to make it turn a corner or follow a curved path, is produced by friction between the tyres and the roadway. The centrifugal force tending to make the car follow a straight line is produced by its speed, weight and the radius of the curve its centre of mass follows. If the centrifugal force is greater than the centripetal force, the car will start to sideslip and will not follow the curved path intended. The point where centrifugal force just equals the centripetal force is known as the point of critical speed."

In other words, the Constable had calculated a minimum speed to side-slip of 86 kph.

The thrust of Senior Constable Potts' evidence was that when the Ferrari entered the lay-by it was going faster than 86 kph, but how much faster he was unable to determine.

Mr Kiernan believed that the critical speed was in the order of 80 kph. (See Exhibit 14, page 5, paragraph 5.2 and Mr Kiernan's evidence generally). Although there was a difference between his calculations and those of Senior Constable Potts, Mr Kiernan considered that the difference was within acceptable limits.

Mr Kiernan had concluded in his report:

"The loss of control by the driver of the Ferrari was most likely the result of a sudden turning movement to the left followed by a steering correction. This movement was made at an excessive entry speed to the checkpoint lay-by."

Earlier in his report (at page 6) Mr Kiernan stated:

"Therefore it seems likely that the Ferrari was travelling well in excess of the shutdown and lay-by entry speeds and made a sharp turning movement into the lay-by which exceeded the available road friction supply. The vehicle side-slipped, straightened and side-slipped in the opposite direction across the road and finally broadsided into the parked vehicles."

It is clear that whether critical speed was 86 kph (as calculated by Senior Constable Potts) or 80 kph (as calculated by Mr Kiernan), Mr Kabe entered the lay-by at a speed well in excess of the critical speeds identified by both experts.

Mr Kiernan said that it was very hard to suggest that Mr Kabe was travelling at a speed less than 100 kph when he entered the lay-by. Mr Kiernan had put the speed at the point where traction was lost as being up to 150 kph (page 423 of the transcript).

Mr Kahlbetzer assessed the speed of the Ferrari at 140-160 kph at the entry to the lay-by (page 433 of the transcript). Mr Kimber estimated the Ferrari's speed to be 140 kph "when it left the highway onto the lay-by".

I find on the evidence adduced that Mr Kabe entered the lay-by at a speed not less than 100 kph, and possibly as high as 150 kph. That he entered the lay-by at a speed in excess of 100 kph is made obvious by the path of the vehicle and the distance it travelled before impact.

In broad terms the driver error consisted of Mr Kabe attempting to enter the lay-by by way of sudden turning movement to the left and at an excessive entry speed.

The second steering correction to the left amounted to an error. I accept the evidence given by Mr Moffat that instead of this correction Mr Kabe "should have let it go", that is to say, that instead of trying to stay on the Highway Mr Kabe should have allowed the Ferrari to slide across both lanes of the highway into the sand adjacent to the Alice Springs bound lane. However, to put Mr Kabe's error in perspective, any decision to "let the vehicle go" was according to Mr Moffat a learned response acquired through first hand experience in losing control of vehicles on both bitumen and loose surfaces.

Although it is clear that the direct cause of the accident was a fatal error of judgement on the part of the driver of the Ferrari in relation to his approach to the checkpoint at Stuart Well which resulted in the loss of control over his vehicle, the above reconstruction of the accident does not explain why Mr Kabe attempted to enter the lay-by at the speed and manner in which he did. In other words, the accident reconstruction does not address any factors that might have contributed to the accident.

Contributory Factors.

It has been suggested that Mr Kabe failed to be aware of the shutdown zone preceding the checkpoint, and the checkpoint itself; and that accounts for Mr Kabe attempting to enter the lay-by at the speed and in the manner in which he did. It was further suggested that Mr Kabe's failure to be aware of the shutdown zone and upcoming checkpoint was due to a number of factors:

- (1) Excessive speed;*
- (2) The presence of the vehicle driven by Mr Castaldi;*
- (3) The lack of appropriate warning signs prior to the checkpoint;*
- (4) The location and nature of the checkpoint;*
- (5) The accuracy of the Cannonball Run route instructions;*
- (6) Lack of comprehension of the route instructions by Mr Kabe and Mr Okano, or lack of familiarity with the instructions.*

I am satisfied on the balance of probabilities that Mr Kabe entered the lay-by in his Ferrari at the speed and in the manner in which he did as a result of suddenly becoming aware of the presence of the checkpoint. The relevance of each of the above factors to that set

of circumstances is dealt with below.

Excessive Speed.

It is clear on the evidence that Mr Kabe's Ferrari was travelling at excessive speed so close to and on the shutdown zone.

Counsel assisting the Coroner submitted: "It seems inescapable that one of the reasons for Mr Kabe's apparent excessive speed so close to and on the shutdown zone area was that he was attempting to reach the checkpoint without any loss of points." This submission needs to be very carefully analysed.

Counsel Assisting submitted as follows:

"At the stage where the Porsche overtook the Ferrari, as the latter vehicle slowed right down because of the apparent error as to the position of the checkpoint, Mr Kahlbetzer and Mr Wallis were of the view that there was a potential problem with time so far as arrival at the checkpoint without loss of points was concerned. Mr Kahlbetzer said:

"We thought we still had twenty seconds up our sleeve but obviously if he kept going at 60 kilometres and we couldn't overtake I'd say that there was and there were a couple of caravans coming the other way when we hit the broken line or whatever, that twenty seconds would have been very quickly disappeared. So we asked him to hurry up. As it turned out, he didn't but we had the broken yellow line which was clear and at 230 or whatever speed it was we would have arrived easily within our time limit (T430.1)"

It followed, accordingly, that if Mr Kahlbetzer's times were correct and if the Porsche departed a minute later than the Ferrari, if the Porsche had twenty seconds to spare at that point, then the Ferrari was 40 seconds behind. (T430.4)".

This circumstantial evidence is, of course, built upon the supposition that Mr Kahlbetzer's times were correct. Even if his times were correct, it does not necessarily follow that Mr Kabe and Mr Okano had calculated that at that stage of the Run they were running 40 seconds behind time. For these reasons the circumstantial evidence in question must be

treated cautiously.

Counsel Assisting also relied upon the course of the Run and in particular, the high speed overtaking by the Ferrari of the Porsche shortly before the checkpoint.

The evidence showed that at about the 87.3 kilometres mark, the Ferrari slowed markedly after passing the flag marshals which were positioned at that location. This was approximately 7 kilometres short of the checkpoint. The evidence supports the reasonable inference that Mr Kabe and Mr Okano mistakenly believed that they had arrived at the checkpoint. The fact that on day 2 of the Run Mr Kabe had missed a control point and believed that he had probably incurred a substantial loss of points by doing so, might suggest that as he approached the 87.3 mark he was being somewhat over cautious to ensure that he did not miss a checkpoint again. This lends weight to the inference that the occupants of the Ferrari team mistakenly believed that they had arrived at the checkpoint. In this context Mr Takahashi's evidence that he had been told that the checkpoint was difficult to find, and had communicated this warning to the Japanese crew becomes relevant. It is relevant because at the 87.3 mark, disregarding the presence of the flag marshals, the location was not easily recognisable as the checkpoint which is consistent with the information passed onto Mr Kabe and Mr Okano by Mr Takahashi. Further, it was Mr Kahlbetzer's evidence that he thought that the Japanese team were lost. Mr Portlock believed that the Japanese team had mistaken the 87.3 kilometre mark to be the checkpoint. Taking all these matters together, and in the absence of any alternate reasonable explanation for the Ferrari slowing down as it did, it is reasonable on the balance of probabilities to conclude that the Japanese crew mistook the 87.3 mark to be the check point for the first section of day 3 of the Cannonball Run.

The following scenario is consistent with the Ferrari team having mistaken the 87-3 kilometre mark to be the checkpoint: realising that they had not arrived at the checkpoint, and having necessarily lost time as a result of slowing down to a speed of about 60 kph (note the effect this would have on average speed over the journey), the Ferrari accelerated, caught up to the Porsche and overtook it, all with a view to making up lost time (and to maintain the required average speed to ensure arrival at the actual checkpoint within the prescribed time).

However, the hypothesis that Mr Kabe and Mr Okano thought that they were running into the risk of incurring penalty points for late arrival at the checkpoint and approached it at speed in order either to avoid that consequence or to reduce the penalty points likely to be incurred has to be tested against the rest of the evidence adduced at the inquest, and, indeed as against alternate hypotheses.

It will be recalled that it was suggested to Mr Wallis that Mr Kabe may have overtaken the Porsche immediately before the checkpoint and driven at an excessive speed to ensure that no penalty points were incurred. That suggestion was rejected by Mr Wallis who believed that the Ferrari team were not really concerned about their time. His evidence was that on the morning of day 3 of the Run Mr Kabe appeared to very relaxed, joking with Mr Kahlbetzer and waving to spectators whilst driving through Alice Springs. Mr Wallis' opinion as to Mr Kabe's disposition on the morning prior to the accident does not sit comfortably with the suggestion that Mr Kabe was racing to the checkpoint to make up lost time and to avoid incurring penalty points.

There was also the evidence of Mr Takahashi, the Japanese interpreter, who had spoken to Mr Kabe at the end of day 2 of the Run. He said that Mr Kabe had told him that he was enjoying himself, and that whilst he wanted to win the event, the most important thing for him was taking part in the Cannonball Run. This evidence is relatively neutral, and does not sit uncomfortably with the proposition that Mr Kabe drove at an excessive speed just prior to the checkpoint to ensure that no penalty points were incurred (which is consistent with finishing within time without winning the event).

It would appear on the evidence that the accident occurred at 9.33 or 9.34am which would suggest that the Ferrari was on time, and but for the accident would have safely arrived at the checkpoint without incurring penalty points. One might argue that this militates against the suggestion that the Ferrari overtook the Porsche, and continued to travel quickly towards the checkpoint in order to make up lost time, for the simple reason that the Ferrari was on schedule to arrive at the checkpoint within the prescribed time. However, this overlooks the possibility that the Ferrari team may have miscalculated their times, and mistakenly believed that they were running behind time. Hence, the overtaking manoeuvre, and the fast approach to the checkpoint, to ensure that the Ferrari would arrive in time, barring any accident. Therefore, resort to the time of the accident does not

assist greatly in determining what went through Mr Kabe's mind as he approached the checkpoint.

Counsel appearing for Cams made the following submission:

"The deceased had previously slowed his vehicle down to a point 87.3 kilometres south of Alice Springs, possibly believing that the flag marshals stationed there were indicating that end of the Cannonball Special Section. However, even if the deceased driver had not slowed down at the point as a result of the misunderstanding attributed to him, he and / or his navigator must still have been aware as a result of reading their route instructions and odometer that they were somewhere near the end of the special section. Thus, his driving from that point was probably influenced by his (likely) knowledge that the end of the special section was near."

This submission implies that Mr Kabe either intentionally or recklessly drove at excessive speed, knowing that the shutdown zone and the checkpoint were coming up.

It would, in my opinion, be completely unsafe to impute any state of knowledge on the part of the Ferrari team as to the actual whereabouts of the checkpoint after they had slowed down at the 87.3 kilometre mark. If the Ferrari team had slowed down at the 87.3 kilometre mark, mistakenly believing that to be the checkpoint, it must follow that Mr Okano was not doing a number of things including:

- (1) Accurately reading the route instructions,*
- (2) Checking the odometer reading on the Ferrari against each location referred to in the instructions as the vehicle travelled down the route,*
- (3) Not allowing for the inaccuracy of the odometer on the Ferrari (ie one kilometre per ten kilometres difference).*

I am not convinced that after slowing down at the 87.3 kilometre that the Ferrari team made some re-assessment of their position on the route, which would necessarily have required each of above the things to be attended to in order to arrive at a reliable estimate of the whereabouts of the checkpoint.

I would also add that the element of recklessness which it is suggested might be attributed to Mr Kabe is not independently supported by other cogent evidence.

Inevitably one looks for a coherent explanation for Mr Kabe's manner of driving between the 87.3 mark and the actual checkpoint. There is, of course, no direct evidence of what went through Mr Kabe's mind during the final stages of the special section because any such evidence died with Mr Kabe and Mr Okano. Therefore, Mr Kabe's state of mind can only be inferred from all the surrounding circumstances. A significant part of those circumstances is that Mr Kabe overtook the Porsche at a point relatively close to the checkpoint, and travelled at high speed towards the checkpoint. Whether or not the Ferrari team were aware that the checkpoint was coming up, the fact is that Mr Kabe saw a need to drive as he did. One would have to presume that Mr Kabe and Mr Okano were both aware of the average speed required for the special section (ie 198 kph). As the Ferrari approached the 87.3 mark it slowed down appreciably, so much so that that deceleration would have obviously affected the Ferrari's average speed during the special section. The Porsche team who were behind the Ferrari at that point were clearly aware of the consequences of travelling at a substantially reduced-speed. It is an unavoidable conclusion that the Ferrari rapidly increased speed after slowing down and subsequently overtook the Porsche, to maintain its required average speed during the special section.

Whether or not the Ferrari team were consciously trying to make up time in the sense that they believed they were behind time (which will never be known), it is clear that the Ferrari accelerated and overtook the Porsche in order to maintain its average speed over the journey. Although Mr Kabe appeared to have taken a somewhat casual approach to the Run on day 3 of the event, thereby suggesting that he did not care about winning the event, it would indeed be surprising if Mr Kabe did not wish to arrive at the checkpoint at the end of the special section within time. The maintenance of an average speed of 198 kph was fundamental to achieving that objective. If Mr Kabe were not concerned about reaching the checkpoint within time why then overtake the Porsche and continue at high speed towards the checkpoint. It could not be seriously suggested that Mr Kabe was trying to arrive at the checkpoint early. Mr Kabe's overtaking manoeuvre and maintained speed near the checkpoint only makes sense if he was trying to maintain his average speed over the run which had been substantially affected by the drop in speed at the 87.3 kilometre mark.

However, for reasons that will soon become apparent Mr Kabe's excessive speed so close to and on the shutdown zone fails to adequately explain the accident.

The presence of the vehicle driven by Mr Castaldi.

A more difficult issue to resolve is the significance of the presence of the vehicle driven by Mr Castaldi as a contributory factor in the accident.

Where the evidence of Mr Castaldi in relation to the proximity of his vehicle to the Ferrari conflicts with the evidence of Mr Wallis, Mr Kahlbetzer Mr Kimber and other eye witnesses I prefer the evidence of those witnesses. That resolution of the evidentiary conflict necessarily means that the Ferrari was travelling much closer to the Lexcen both prior to and at the point of Mr Kabe's manoeuvre into the lay-by and as he skidded out of the lay-by than as Mr Castaldi would have the situation.

As to the possible significance of Mr Castaldi's vehicle, Mr Kiernan gave the following evidence at page 355 of the Transcript in response to questions put to him:

"(Q) You talked about factors that must be taken into account that may contribute to the accident...and you included the presence of other vehicles. I was suggesting to you that the presence of the Lexcen really relates to the speed of the Ferrari, which was the main factor in this accident?

(A) Well, it - it'll influence the speed of the Ferrari and it will also influence driver behaviour.

(Q) How will it influence driver behaviour?

(A) Well, there are a series of events occurring as the Ferrari approaches the checkpoint. He is on a curve. He has just overtaken the Porsche some distance back. He possibly knows there is a checkpoint coming up. So he has a few things to think about. We've established that perhaps his sight distance isn't as good as the traditional car, so therefore there are other factors, behavioural factors, influencing the driver with his actions.

(Q) And the mere presence of a vehicle, whether you're tailgating it or not, but the mere presence of a vehicle right in front of you is a fact that a driver must take into account...

(A) Yes...the gap between the vehicles that is normally considered an acceptable gap for traffic engineers would be a two second gap, and a two second gap at...let's say 100 kph is a distance of about 50 metres. I would think if he was travelling anything less than two second gap away from the vehicle in front, he would be most aware of the vehicle. "

It seems certain from the evidence of Mr Wallis, Mr Kahlbetzer and Mr Kimber that the Ferrari was travelling much closer to the Lexcen than 50 metres when it deviated into the lay-by.

Mr Moffat was of the opinion that as shown in the photograph (Exhibit 4) the Lexcen was only about 18 to 20 metres away from the Ferrari. He added that the two vehicles may have been much closer a second or so before the photograph was taken.

Allowing for parallax error, Mr Kiernan, relying upon the white road marking, put the two vehicles being about 30 metres apart.

I am satisfied on the balance of probabilities that the presence of the Lexcen played a significant part in the circumstances that caused the accident. That is clearly supported by Mr Moffat's evidence, to whose experience as a driver par excellence I defer. Mr Moffat considered that the significance of the Lexcen to the accident increases the closer the Lexcen is to the Ferrari. Mr Moffat stated that as a driver, if there is a car in front of you, your awareness is heightened to the extent that if Mr Kabe was close to the Lexcen, he would be watching the back bumper bar of the Lexcen, and in light of that distraction could well miss the checkpoint. Having preferred the evidence of Mr Kimber, Mr Wallis and Mr Kahlbetzer over the evidence of Mr Castaldi and other witnesses that tend to support Mr Castaldi's I accept that when the two vehicles passed Mr Kimber the Ferrari was following the Lexcen within a metre or two. That finding of fact combined with Mr Moffat's evidence leads to the inevitable conclusion that the Lexcen was a clear distraction to Mr Kabe as he approached the checkpoint at the end of the special section from Alice

Springs to Stuart Well. I consider that the Lexcen, which was directly travelling in front of the Ferrari, absorbed most of Mr Kabe's concentration as he manoeuvred the Ferrari as though to overtake the Lexcen (moving to the right-hand side of the carriageway) on some three occasions. In all probability Mr Kabe's preoccupation with the Lexcen distracted him to such an extent that he failed to see the flag marshal signalling the shut down zone, and accounts for Mr Kabe not seeing the checkpoint until he manoeuvred the Ferrari to the right of the Lexcen on the bend approaching the checkpoint, when he presumably sighted the checkpoint. The fact that the Ferrari was low to the ground meant that Mr Kabe's sight distance from inside the Ferrari was less than in traditional vehicles which stand higher off the ground; and that circumstance coupled with the close proximity of the Lexcen to the Ferrari lends additional weight to the distraction-equation.

Both counsel for the Northern Territory Government and Racecase attempted to down play the relevance of the presence of the Lexcen to the accident. X

Mr Riley, who appeared on behalf of the Northern Territory Government, submitted that the Lexcen had no part to play in accident other than the coincidence of it being nearby at the relevant time. However, that conclusion is based on an unqualified acceptance of Mr Castaldi's evidence and the evidence of passengers in the Lexcen. But for the reasons previously given the evidence of Mr Kimber and others is to be preferred. Mr Riley submitted that whether or not Mr Kabe was preoccupied with driving, and even if he might have been distracted by the Lexcen, the lay-by must have been clearly visible to Mr Okano whose job it was to keep a lookout. He submitted that the Lexcen should not have distracted Mr Okano. I have some difficulty in accepting that proposition. The Ferrari was a left hand drive vehicle which placed Mr Okano on the right hand side of the vehicle. Given Mr Okano's position in the vehicle coupled with the proximity of the Lexcen to the Ferrari, which was a much lower slung vehicle, it is likely that Mr Okano would have been distracted by the Lexcen to some extent, thereby hindering the early transmission of information in relation to the lay-by from navigator to driver. Mr Moffat's suggestion that Mr Kabe applied the brakes and swerved to the left after being informed of the check point is entirely consistent with Mr Kabe and Mr Okano being so distracted by the Lexcen that they failed to see the lay-by until the moment the Ferrari apparently attempted to overtake the Lexcen on the bend leading onto the lay-by.

Finally, Mr Riley submitted that "at its highest the presence of this Lexcen added another factor requiring the attention of Mr Kabe." He asserted that the Lexcen "did not have any direct causative role in the accident." However, the very fact that the Lexcen added another factor requiring the attention of Mr Kabe, and apparently was also a source of distraction to Mr Okano, goes a substantial way towards explaining both the speed at which and the manner in which the Ferrari attempted to enter the lay-by.

Mr Waters, who appeared for Racecage, submitted that the presence of the Lexcen can not plausibly be put forward as blocking the view of both Mr Okano and Mr Kabe of the flag marshal, the signs, or the check point. He bases that conclusion upon the apparently momentary close proximity of the Lexcen to the Ferrari just after the negotiation of the "gentle" right hand sweeper before the check point. He claimed that at best the Lexcen played a passive role. First, the conclusion is based upon a false premise. On the evidence accepted by the Court the Ferrari had been travelling in close proximity to the Lexcen for a considerably longer period and over a substantially greater distance. Mr Waters conceded that the Lexcen may have played a passive role. But that is the very significance of the presence of the Lexcen. It has never been suggested that Mr Castaldi was in any way responsible for the accident. The Lexcen played a passive role in that it presented a distraction to Mr Kabe as he approached the checkpoint at the end of the special section.

The significance of the Lexcen was manifold:

(1) It presented a real distraction to both Mr Kabe and Mr Okano as their Ferrari approached the checkpoint such they did not become aware of the location of the checkpoint until the Ferrari manoeuvred to the right for the final time, presumably to overtake the Lexcen.

(2) The distraction posed by the Lexcen accounted for the Ferrari's apparently excessive speed in the shutdown zone and near the commencement of the lay-by. It is clear that when the Ferrari overtook the Porsche, the Ferrari was travelling at very high speed and maintained that speed as it approached the checkpoint. It is more likely than not that had the Lexcen not been on the highway, and by virtue of its absence not been a distraction to the Ferrari team, the checkpoint would have been sighted by the driver and

navigator of the Ferrari at a far earlier point in time. An earlier sighting of the checkpoint would have in all probability resulted in a reduction of the speed of the Ferrari as it approached the checkpoint.

(3) The presence of the Lexcen clearly contributed to the Ferrari's entry into the lay-by at a sharp angle and at what transpired to be critical speed. Once Mr Kabe became aware of the upcoming checkpoint approximately at the time he manoeuvred to the right of the Lexcen, presumably to overtake that vehicle, it is clear that he then applied the brakes and swerved to the left with a view to entering the lay-by. The reason for Mr Kabe undertaking that manoeuvre is obvious: he did not wish to over run the checkpoint. The fact that it might have been better for Mr Kabe not to attempt to enter the lay-by at that point, and continue with the apparent overtaking manoeuvre with the almost certain result that he would overshoot the control point, is immaterial. As Counsel Assisting the Coroner put it: "An immediate and almost instinctive response, with little or no margin for error was called from Mr Kabe..... these decisions are largely instinctive and taken in split seconds. The immediate impression is everything." What should also be taken into account is that Mr Kabe was participating in a competitive section of the Cannonball Run and the missing of a control point was visited with loss of points. In the circumstances the manoeuvre undertaken by Mr Kabe was not altogether surprising, although clearly fraught with danger.

It will be recalled that Mr Moffat was of the view that Mr Kabe may have veered left back into the lay-by, rather than allowing the Ferrari to continue on its path across the highway, because he could not see past the Lexcen onto the other side of the highway, and therefore did not know whether there was any oncoming traffic. This evidence suggests that the presence of the Lexcen may have had even greater significance in that it was a complicating factor that made it more difficult for Mr Kabe to take the appropriate action to regain control of his Ferrari. Despite the temptation to draw such a conclusion, the evidence given by Mr Moffat remains speculative, and in the absence of any supporting evidence, I am unable to determine what went through Mr Kabe's mind at the critical moment. Therefore, I am unable to conclude that the presence of the Lexcen was a complicating factor influencing Mr Kabe's driving reactions after the attempted entry into the lay-by.

One way of determining the significance of the presence of the Lexcen to the accident is to remove the Lexcen from the matrix of circumstances that surrounded the accident, and ask whether the particular accident would on the balance of probabilities have still occurred. It is most likely that had the Lexcen not been travelling in front of the Ferrari over the distance leading to the shutdown zone and the checkpoint the particular accident which did occur would not have occurred. The Ferrari's attempted entry into the lay-by at a sharp angle and at critical speed, which was influenced by the presence of the Lexcen, was the first stage in a series of driving manoeuvres on the part of Mr Kabe which constituted driver error with fatal consequences. Without the presence of the Lexcen it is highly unlikely that the Ferrari would have attempted to enter the lay-by in the critical manoeuvre which set in train a series of driving manoeuvres which resulted in the four fatalities. It is an inescapable conclusion that the presence of the Lexcen at the precise time and place during the running of the special section of the Cannonball Run from Alice Springs to Stuart Well was a significant contributory factor in the accident.

At pages 1185 and 1186 of the Transcript Mr Riley attempted to explain how the particular accident would have still occurred if the Lexcen were removed from the equation. I did not find the explanation convincing. ✓

The lack of appropriate warning signs prior to the checkpoint.

The evidence was that there was a white sign, located about 40 metres prior to the lay-by, and that there were flags fitted into traffic cones (witches' hats) leading to the checkpoint on the lay-by. There was also a flag marshal (Mr Kimber) at the shutdown zone.

As to the sign (Exhibit 65) prior to the lay-by, Senior Constable Potts gave the following evidence:

"Just prior to departure, I did two things, one was to collect that particular sign (MFI 1.3) from that appropriate location, and that there was also a witches hat with a yellow flag in it, and I needed that to show the Coroner just what sort of flags were being used. Those two were more or less in the same area at the time, and I collected both of them, put them back in the traffic car and I brought them back to the police station."

Mr Potts collected the sign in the same location on the approach to the checkpoint where he has seen it earlier. The sign read "Cannonball Finish Out."

Mr Fraser stated in evidence that he was certain that the sign which was located prior to the commencement of the lay-by was worded "Cannonball Finish In." In order to account for Senior Constable Pott's collection of the sign which read "Cannonball Finish Out", Mr Fraser suggested that the sign must have been changed after the accident to prevent competitors entering the lay-by following the accident. I am satisfied that it is more likely than not that Mr Fraser's explanation reflects the true course of events.

The issue is whether an adequate warning was given to competitors of the checkpoint at the end of the special section from Alice Springs to Stuart Well.

- Any assessment as to the appropriateness of warning signs prior to the checkpoint in question inevitably invites a comparison with the measures taken in relation to other checkpoints in the Run. In relation to the first special section on Day 1 from Noonamah to Adelaide River the shutdown zone was located at Snake Creek Bridge, an easily recognisable landmark, and the control point was at the BP Service Station at Adelaide River, located in a 60 kph speed limited town area. With respect to the run from Pine Creek to Katherine, also on the first day, the shut down zone was at the intersection of the Stuart Highway and Zimin Drive, and the control point was in Main Street Katherine, which has a 60 kph speed limit. The first special section on Day 2, which was from Katherine to Mataranka had the shutdown zone at Mataranka with the control point at the Mataranka parking area in a 60 kph speed limited town area. On the second special section from Larrimah to Daly Waters, also on Day 2 of the Run, the control point was located at the BP Highway Inn, another easily recognisable landmark. The third special section on Day 2 was from Tennant Creek to Devils' Marbles. The shutdown zone was located on an 80 kph access road, and the control point was in the parking area at Devil's Marbles, about 1.5 kilometres off the Stuart Highway. It is clear that the fourth special section, along with the checkpoint at Stuart Well, were the only two control points which were not readily recognisable by virtue of landmarks and/or speed zones. However, the fourth special section from the Ti Tree Roadhouse to a specially created lay-by at the 62.4 kilometres mark at Aileron had 4 shutdown zones prior to the control point referred to in the route instructions. This is in stark contrast to the one shutdown zone referred to in*

the route instructions for the special section from Alice Springs to Stuart Well. It will be recalled that when questioned as to why there was a difference in the route instructions for the two special sections, Mr Fraser stated that Aileron was the first specially created lay-by as there were no convenient definite stopping points in the Aileron area, and it was felt that the participants needed a good warning of the control point, hence the 4 shutdown zones. It was Mr Fraser's belief that the participants would be familiar with the concept for the special section from Alice Springs to Stuart Well the next day, and therefore there was no need to have more than one shutdown zone referred to in the route instructions.

In my opinion the material differences between the Stuart Well checkpoint and the other checkpoints (including the Aileron control point) is in itself sufficient grounds for questioning the adequacy of signs indicating the position of the checkpoint at Stuart Well.

Considered in isolation, the sign that has been exhibited was, in its position, a totally inadequate warning of the checkpoint. It is fair to say that the sign was no more than a direction to competitors of the immediate presence of the lay-by entrance.

Were these other measures in place sufficient to overcome the shortcomings of the sign?

The organisers of the event relied upon the following as proof of the adequacy of the steps taken to warn competitors of the checkpoint:

(1) The visibility of the control point from at least Mr Kimber's position, some 600-800 metres away.

(2) The presence of Mr Kimber as a warning of the checkpoint. In that regard reference was made to the supplementary instructions which nominated a flag marshal as part of the shutdown warning at the end of special sections.

(3) The route instructions which it was claimed warned of the existence of hazards and coupled with the Regulations gave proper warning of the shutdown zones and checkpoints and;

(4) *The sign at the commencement of the lay-by and the presence of traffic cones along the Lay-by.*

The fact that the control point was visible from Mr Kimber's position 600 - 800 metres away is not sufficient reason to dispense with adequate signage, warning of the control point. It is clear that Mr Kimber knew precisely where the checkpoint was, and knew where to look. Furthermore, it is by no means certain that a competitor, not having seen the checkpoint before, travelling at high speed and concentrating on his driving would see the checkpoint as clearly as Mr Kimber. Mr Kahlbetzer appears to have only seen the checkpoint some 500 metres away. It is accepted that there was a flag marshal at the shutdown zone. However, the presence of a marshal with a yellow flag did not of itself indicate the shutdown zone, but only warned of the need for caution. The fact that the Supplementary Regulations may have nominated a flag marshal as part of the shutdown warning at the end of special sections does not overcome the problem. There was a need to clearly identify Mr Kimber as providing a warning of the shutdown zone. That could have been achieved by clearly differentiating him from other flag marshals, warning of hazards, by providing him with a chequered or otherwise distinctively marked flag.

It is very much to the point that the lack of sufficient differentiation between flag marshals may well have led Mr Kabe to mistaken the flag marshals earlier on in the section as indicating the checkpoint. Rather than differentiate between those marshals warning of hazards and those warning of control points, the preferred option would have been to erect a sign indicating of the shutdown zone and control point.

Mr Kahlbetzer, whom I consider to be a credible evidence, gave some very telling evidence at the inquest in relation to flag marshals. He believed that the signs and flag marshals were very difficult to see and were inadequate for their intended purposes. It will be recalled that Mr Kahlbetzer did not see Mr Kimber and or any sign at the lay-by. That might be explained by the fact that Mr Kahlbetzer's attention was squarely focused on the Ferrari and the Lexcen. However, one cannot help but feel that both Mr Kimber and the sign could have been more visible to competitors travelling at high speed.

Mr Kahlbetzer said that if the event were held again additional and more visible signs might have to be used. He was of the opinion that:

"The sign should stand out sufficiently or maybe a different colour to the other flags...you could complete the run with the signage that was there, but if you were doing it again, I think, better signage would be more appropriate than the signage that was there. I don't think the signage was a real influence in this incident but it could have helped the situation a little bit more."

Mr Kahlbetzer discerned the following difficulties:

"Difficult to see marshals. I mean sometimes the shutdown zones were'nt clearly marked and....because you had marshals on some corners etc...unless you knew where your shutdown zone was anyway, you wouldn't necessarily know that that marshal there was signifying that it was a shutdown zone that you were coming up to."

Finally, Mr Kahlbetzer offered the following opinion in relation to the slowing down of the Ferrari at the 87.3 kilometre mark:

"Obviously the Japanese were lost, didn't know where they were. So if there was a clear sign on the side of the road saying "shut down zone here", then that would have taken any potential confusion out of having a marshal with a flag, of which those were a number in the section."

Mr Kahlbetzer was a competitor in the event and his evidence was not only reliable, in my opinion, but extremely valuable in drawing attention to the inadequacy of the measures taken to warn of the checkpoint at Stuart Well.

In my opinion the route instructions, whilst they may have given some indication of the checkpoint, clearly could not by themselves be an adequate warning of the control point.

Route instructions are primarily a reference for the navigator, not the driver.

The driver relies upon his navigator to tell him where they are and what features are coming up. It is hard to imagine a competitor solely relying on information conveyed to him by his navigator, and not himself keeping a lookout for control points. A sign on the

road warning of the control point would clearly assist the driver. The adequacy of the route instructions will be addressed in the next section of these findings.

Like the sign located prior to the lay-by the traffic cones fitted with flags merely indicated the lay-by. They were clearly an insufficient warning of the shutdown zone and control point.

In my opinion, the sign at the commencement of the lay-by, the presence of traffic cones fitted with flags, the presence of Mr Kimber as flag marshal and the route instructions taken as a whole did not represent a substitute for adequate signage, and therefore failed to provide adequate warning of the checkpoint.

This seems to be an opinion shared by others. The Cams' Stewards report (Exhibit 36) noted the total lack of warning signs for a control point. Page 12 of the Report noted:

X "On Thursday new signs had appeared warning of end of section control ahead, plus Council "Prepare to Stop" and "Slow" signs well before the control. Still not as effective as the international signs but far superior to previous days."

Mr Ian Jorden, the chief official in the Cannonball Run, noted in his statement to the Coroner that in hindsight more warning signs should have been placed before checkpoints."

Mr Kiernan had also identified possible problems with signage and made various recommendations as to improved signage for the event.

Mr Kiernan gave the following evidence at page 361 of the Transcript:

"...you could've had a sign saying "checkpoint" at the taper and you could then have had your shutdown white sign at an appropriate distance further north, followed by a - the action the marshals were - the warning that it was coming up."

At Page 372 of the transcript Mr Kiernan gave the following evidence:

"I think I - we would have to identify that this was the Cannonball Run on any sign

because there is - the public are still using the road. So the - I think I'd put up three signs. One would be the - the warning that there is something about to be - about to be transmitted to the - a warning transmitted to the drivers and I would, in this case, use the speeds that are clearly set out in the conditions. I would use the speed of 120 kilometres an hour and then, at the point of entry, I'd have the speed of 60 kilometres an hour that is specified for the lay-by. So I would have three signs. One, the warning that the checkpoint is coming up; two, a shutdown 120 kilometres an hour sign; and a 60 kilometres an hour sign, and I'd clearly identify those as being part of the Cannonball Run so that they weren't confused with any road signs for the normal public. The distance apart, without trying to specify them, I would suggest that would be, as I've mentioned before, a comfortable braking distance from the recognised speed - or maximum speed of, say, 200 kilometres an hour, to slow down to 120 kilometres an hour. I think if the rules - if all drivers had the rules beforehand, they would be - those signs would be quite clear to them."

— *At page 373 of the transcript Mr Kiernan gave evidence as to what he would consider to be appropriate in terms of the positioning of such signs.*

At page 413 of the transcript Mr Kiernan agreed that minimal signage would suffice in the case of a checkpoint like the one at Stuart Well.

Was the lack of adequate warning of the shutdown zone and the control point a contributory factor in the accident? Notwithstanding the above comments about inadequate warning of the shutdown zone and control point, I am unable to be reasonably satisfied that had there been signage of the type suggested By Mr Kiernan, the particular accident would not have occurred. I say that because there were other factors at work, in particular the presence of the Lexcen, which may have prevailed notwithstanding the presence of signs, and the same accident might still have occurred.

The Location and nature of the Checkpoint.

The site of the checkpoint was chosen by Mr Moffat because it was thought that the original site at the roadhouse at Jims Place might have caused a congregation of traffic turning right off the highway, across the face of oncoming northbound traffic. Mr Moffat

considered the visibility of the checkpoint to be good, and wished to avoid placing the control point further away from Alice Springs because the road ceased to be level, and was undulating.

In my opinion the checkpoint was strategically placed, and could be seen in sufficient time for safe negotiation by competitors provided they were given sufficient warning of the shutdown zone and the checkpoint. Accordingly, the location of the checkpoint was not a contributory factor in the accident.

The evidence was that a specially prepared bitumen lay-by had been laid on the left verge of the road. The lay-by was constructed about 3 weeks before the event, and the excess aggregate left on the surface was not broomed off in accordance with normal procedure. According to Senior Constable Potts (paragraph 21.3 of his report) it was normal that the blue metal aggregate remained unswept after the bitumen had been laid. Apparently, it is only when the road becomes stabilised that the strip is swept of excess aggregate. The lay-by was at the relevant time not stabilised.

At paragraph 4.2 of his Report Mr Kiernan gave the following evidence in relation to the design and construction of the lay-by.

"Loose aggregate on the road surface following the completion of a bituminous flush seal is a common problem on high speed rural roads. The design and execution of work normally aims to establish rapid adhesion of binder and aggregate, but generally there is an excess of aggregate. This requires vehicle speed controls for a period after the sealing to "work in" as much aggregate as possible. After this has occurred the road should be swept clean of excess aggregate before opening to unrestricted traffic.

The main hazard associated with excess aggregate is windscreen damage from flying stones and reduction in friction supply on the road surface, particularly on bends where vehicles may sideslip if the cornering vehicle friction demand exceeds supply (as in this case). In this instance, the loose aggregate is on the lay-by which is not subject to normal traffic movements that assist to "work in" the aggregate. As a result there is excess aggregate on the lay-by that appears not to

have been swept on completion of the project."

At paragraph 4.3 of his Report Mr Kiernan stated that "the loose material reduces the friction supply for turning and stopping vehicles." He added: "It is unlikely to impact on a vehicle travelling at normal speeds with the driver exercising due care."

Did the recently constructed lay-by contribute to the accident in as much as the loose aggregate reduced the co-efficient of friction thereby causing or contributing to Mr Kabe's loss of control of his vehicle?

The existence of loose aggregate on the lay-by as testified to by Mr Kahlbetzer and Mr Wallis is not in itself sufficient to establish that the loose aggregate was a causative or contributory factor in the accident.

Senior Constable Pott's calculation of critical speeds (92kph on the carriageway and 86 kph on the lay-by) which I find to be within acceptable limits coupled with the fact that the Ferrari was travelling well in excess of the critical speed on the carriageway removes the presence of loose aggregate on the lay-by as a contributory factor in Mr Kabe's loss of control of the Ferrari. I am satisfied that even if there had not been loose aggregate on the lay-by the Ferrari would have still lost control.

In his statement to the Coroner Mr Kiernan described the lay-by in the following terms:

"The lay-by is 220 long including tapers, and suitable for high speed traffic. Vehicles entering the lay-by at speeds in the order of 100 kph would have been able to stop at the checkpoint (about 175 metres from entry) at comfortable deceleration rates. In an emergency a vehicle travelling at 150 kph could well stop well within this distance."

On page 6 of his statement Mr Kiernan proffered the following opinion.

"In general it is considered that the road conditions at the checkpoint and lay-by dimensions were adequate for the designed purpose. Provided the Cannonball Run procedures were adhered to with respect to warning signs and drivers conformed

to the shutdown and lay-by entry speeds it is considered that there were no additional safety measures required at this checkpoint."

Mr Kiernan gave evidence that the lay-by was suitable for high speed traffic, and that vehicles could safely enter the lay-by at a normal shallow angle of approach at speeds of up to 150 kph. It was envisaged by the organisers that the lay-by would be entered at a speed of 60 kph.

Mr Kiernan accounted for the accident in the following terms:

"Therefore it seems likely that the Ferrari was travelling well in excess of the shutdown and lay-by entry speeds and made a sharp turning movement into the lay-by which exceeded the available road friction supply."

It was the entry at a sharp angle combined with excessive entry speed (even on a firm surface) that set in train the sequence of events leading to the accident. The loose aggregate on the lay-by, in my opinion, did not contribute to the accident.

The accuracy of the Cannonball Run Route Instructions.

Senior Constable Potts referred to what he considered to be a number of deficiencies in the route instructions:

(1) there were a number of physical features that were not marked on the route instructions for the first section of Day 3 of the Run: a substantial dip in the road (at 38.1), a crest (at 39.7); a floodway (at 49.1); a crest (at 50.2) another crest (at 54.9); 3 floodways (at 62.6, 63.4 and 63.9); major crests (at 68.7 and 69.9; more crests (at 85.5 and 86.5); and 2 distinct right hand sweepers immediately preceding the checkpoint and;

(2) that there was no information on the route instructions to actually indicate the whereabouts of the checkpoint. There was no mention of physical features to assist in anticipating the checkpoint. The final reading on the odometer had to be relied upon.

It is noted that both Mr Moffat and Mr McVean both stated that they would not alter the

route instructions to refer to the presence of flag marshals at the shutdown zone or to incorporate the right hand sweeping bend preceding the checkpoint. Their answer was they did not want to overload drivers and navigators with information, and in any event the additional information was not necessary.

I generally agree that "information overload" should be avoided in the compilation of route instructions. Many of the deficiencies identified by Senior Constable Potts do not appear to be of any real moment. However, I consider the absence of a reference to the right hand sweeper, being a road feature, the commencement of which indicated the shutdown zone, and which indicated the general whereabouts of the checkpoint, was a significant deficiency, in light of the following circumstances:

(1) the absence of adequate signage, warning of the shutdown zone and the checkpoint. Hence the earlier conclusion that the route instructions were not a substitute for adequate signage and

(2) the effectiveness of the route instructions depended upon the use and accuracy of vehicle odometers. Mr Wallis believed that the odometer in the Porsche was approximately 2% out whereas Mr Kahlbetzer, the driver of the Porsche thought that his odometer was 5% out. There was evidence from Mr Takahashi that he had been informed by Mr Kabe and Mr Okano that there was a difference of 1 kilometre per 10 kilometres with the odometer in the Ferrari. This meant that the Ferrari team had to take the difference into account when attempting to calculate the exact kilometres travelled over the section by relying upon the odometer reading. As pointed out by Senior Constable Potts the margins of difference in the odometer readings meant that the competitors had to be vigilant in checking their odometer readings against each location they passed on the journey from Alice Springs to Stuart Well. Therefore, due to the margins of difference in odometer readings there was a need for competitors to exercise caution in relying solely on odometer readings on route instructions warning them of a shutdown zone. In other words, mere reliance on odometer readings could result in an incorrect assessment of the location of the shutdown zone and the upcoming checkpoint indicated in the route instructions. It is more likely than not that the inaccuracy of the odometer on the Ferrari partly accounted for the Ferrari team mistaking the 87.3 kilometre mark to be the checkpoint.

In my opinion, if the shutdown zone and checkpoint had been more explicitly described in the route instructions by reference to a physical feature, such as the right hand sweeper, that would have assisted competitors in determining the whereabouts of the shutdown zone and checkpoint. However, that would not obviate the need for there to be adequate signage warning of the shutdown zone and the checkpoint.

It can be no answer to the apparent lack of information on the route instructions in relation to the shutdown zone and checkpoint that there was no complaint from competitors concerning deficiencies in the route instructions. The route instructions in as much as they attempted to identify the location of the shutdown zone and checkpoint could have provided more information such as the right hand sweeper, and if another Cannonball Run were to be held, shutdown zones and checkpoints should be described as fully as possible on route instructions by reference to physical features along the road, wherever possible.

It is not possible to determine the part, if any, played by the deficiencies in the route instructions relating to the whereabouts of the shutdown zone and checkpoint because of the presence of other factors, such as lack of adequate signage and the presence of Mr Castaldi's Lexcen, which may have prevailed even if a fuller description of the shutdown zone and checkpoint had been provided in the route instructions.

The lack of comprehension of English by Mr Kabe and Mr Okano and their lack of familiarity with the route instructions.

Mr Kabe and Mr Okano were assisted by Mr Takahashi, a Japanese interpreter. Mr Takahashi had acted as a translator, and had been involved in the promotion of the Cannonball Run in Japan. He had translated the documentation in relation to the event from English into Japanese. Prior to the event he had also translated the "Guide to Competitors", the Rules Procedures and Supplementary Regulations Manual, and other documentation from English into Japanese.

Mr Takahashi stated that Mr Kabe's and Mr Okano's command of the English language was fairly poor. For that reason they required his assistance at the briefing sessions in the evenings prior to the following day's event. The briefings were mainly verbal, but competitors were also provided with the route instructions for the following day. Mr

Takahashi expressed concern that he was unable to provide the Japanese competitors with a translated version of the next day's route instructions because the route instructions were not made available to competitors prior to the briefing session. It had been the wish of the Japanese competitors to receive route instructions and time sheets in advance of the briefing sessions to enable them to discuss the documentation in Japanese.

The organiser's explanation for not providing Mr Takahashi or other competitors with route instructions prior to the evening before the next day's event was security -driven, and designed to prevent competitors gaining an unfair advantage by running the route beforehand.

Mr Moffat gave evidence as to the special "mock-up" of all flying mile and special sections constructed especially for a Japanese briefing where all signs to feature in the Cannonball Run were displayed, and two hours were spent explaining in Japanese the structure of the Run to the Japanese competitors.

It is also important to note that Mr Takahashi did not believe that the Japanese team had any difficulty in understanding the route instructions after he had explained them. Although at the outset it was necessary for Mr Takahashi to write every single word on the route instructions into Japanese, by Day 3 the Japanese competitors were apparently more familiar with the route instructions, and it was sufficient for Mr Takahashi to highlight only the more significant parts of the instructions, such as caution areas.

All things considered, I am satisfied that the organisers paid sufficient attention to briefing the Japanese competitors and took adequate steps to ensure that they understood the route instructions. However, that is not to say that on Day 3 of the Cannonball Run the Ferrari team may not have been confused as to the whereabouts of the checkpoint. Whether that confusion was the result of a lack of understanding of the route instructions will never be known. However, if there were any such lack of understanding on the part of the Japanese team it can not, in my opinion, be reasonably attributed to any omission on the part of the organisers in relation to the briefing of Mr Kabe and Mr Okano.

FORMAL FINDINGS (SECTION 34 OF THE CORONERS ACT)

I make the following findings as to the cause and manner of death of each deceased:

(1) *On 24th May 1994 Timothy Douglas Linklater, late of 38 Jacomb Place, 17 Mile, Howard Springs, born in Sydney on 12th March 1972, died from the effects of a blunt head injury which he sustained on the same day whilst acting as a marshal in the Inaugural Cannonball Run. The blunt head injury was sustained when a vehicle being driven by Akihiro Kabe (a competitor in the Cannonball Run) collided with an official support vehicle parked at a checkpoint on the Stuart Highway approximately 95 kilometres south-west of Alice Springs, and as a result of the collision the deceased was trapped between the two vehicles*

(2) *Keith Alan Pritchard, late of 365 Bees Creek Road, Bees Creek, born on 12th July 1962 at Geraldton, Western Australia, also died on 24th May 1994 from multiple injuries sustained in the same accident when after the vehicle being driven by Akihiro Kabe collided with the aforesaid official vehicle, that vehicle impacted with another official support vehicle parked at the checkpoint, with the result that the deceased was trapped between the two vehicles. The deceased was also at the time a marshal in the Cannonball Run.*

(3) *On 24th May 1994, Akihiro Kabe, late of 1-10-27 Saiwaicho Tachikawa, Tokyo, Japan, born on 1st July 1953 in Tokyo, Japan died from the effects of a blunt head injury sustained on the same day in the same accident on the Stuart Highway approximately 95 kilometres south-west of Alice Springs.*

(4) *Takeshi Okano, late of 2-40-10 Wakaba - Cho Tachikawa, Tokyo, Japan, born on 6th May 1959 in Tokyo, Japan died on 24th May 1994 from the effects of a blunt head injury and a blunt chest injury sustained on the same day in the same accident whilst a passenger/navigator in the vehicle being driven by Akihiro Kabe.*

All relevant circumstances surrounding the accident, including factors that contributed to the accident have been dealt with in the section headed "Cause or Causes of the accident."

COMMENTS AND RECOMMENDATIONS

THE ROLE OF THE NORTHERN TERRITORY GOVERNMENT IN RELATION TO THE CANNONBALL RUN

This is a relevant issue for the Coroner for two reasons.

Firstly, pursuant to Section 34 of the Coroners Act, a Coroner investigating a death is required to find, inter alia, (a) the cause of death and (b) any relevant circumstances concerning the death. The latter requirement broadly translates into what is traditionally regarded as the manner of death. Accordingly, it is proper for the Coroner to determine the following matters:

- (a) What was the role of the Northern Territory Government in relation to the running of the Cannonball Run. This line of inquiry has both descriptive and normative aspects. In purely descriptive terms it asks what role did the Northern Territory actually assume. At the normative level it is concerned with the role that the Government ought to have played in relation to the event.*

and

- (b) Did the role actually played by the Northern Territory Government in relation to the Cannonball Run in any way cause or contribute to the four deaths which occurred during the running of the event.*

Secondly, a Coroner is empowered to "Comment on a matter, including public health or safety or the administration of justice, connected with the death.....being investigated (Section 34 (2) of the Coroners Act). The Coroner also "may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death.....investigated by the Coroner" (Section 35 (2) of the Coroners Act). Sections 34 (2) and section 35 (2) roughly correspond to sections 19 (2) and 21 (2) of the Victorian Coroners Act 1985. The effect of both those provisions was judicially considered in Harmsworth v The State Coroner (1989) VR 989. In Harmsworth Nathan J held (at page 996):

"The power to comment, arises as a consequence of the obligation to make findings: see Section 19(2). It is not free-ranging. It must be comment "on any matter connected with the death". The powers to comment and also to make recommendations pursuant to section 21 (2) are inextricably connected with, but not independent of the power to inquire into a death or fire for the purposes of making findings. They are not separate or distinct sources of power enabling a Coroner to inquire for the sole or dominant reason of making comment or recommendation. It arises as a consequence of the exercise of a Coroner's prime function, that is to make findings".

In Harmsworth v The State Coroner the complaint was that the State Coroner had exceeded his jurisdiction by seeking to investigate matters relating to prison administration and operations. Nathan J made the following observations (at page 996):

"An inquest into particular deaths in a prison, is not and should not be permitted to become an investigation into prisons in which deaths may occur. A comment on the particular deaths may be pertinent, especially so if the prison facilities were found to be inadequate. It could even be that a comment could have general application, and so much is envisaged by the Act which gives commentary and recommendatory powers in matters of public safety. But the power to comment is incidental and subordinate to the mandatory power to make findings relating to how the deaths occurred, their causes and the identity of any contributory persons."

In my opinion, the effect of the judgment in Harmsworth v State Coroner is such that in the context of the present inquest it is entirely proper for the Coroner to pass comments and make recommendations in relation to any matters of public safety arising out of the planning and running of the 1994 Cannonball Run. It is not essential that any such matters of public safety are directly linked in a causative sense to the deaths of the four deceased. It is sufficient if the planning and running of the 1994 Cannonball Run by itself raises issues of public safety. I consider that the phrase "...on a matter, including public health or safety connected with the death (the emphasis is mine)....being investigated" permits such an approach to be taken by a Coroner.

The words "connected with" were judicially considered by the Full Court of the Federal Court in Collector of Customs v Pozzolanic Pty Ltd, Collector of Customs v Pressure Tankers Pty Ltd (1993) 115 ALR1. The Court held that the words "Connected with" are

capable of describing a spectrum of relationships ranging from direct and immediate to tenuous and remote, and to determine the application of the facts to that phrase involved a selection process and what is necessarily a value judgment about the range of the Act, and that is a question of law.

The Court also observed that though the words "connected with" require consideration of spatial, temporal, economic and mechanical factors, the concept of "proximity" is not always strictly necessary as a tool of analysis.

Given the range of the Northern Territory Coroners Act, and the fundamental preventive role of the Coroner, I consider that a Coroner has under that Act commentary and recommendatory powers in relation to any issues of public safety arising out of the planning and running of the 1994 Cannonball Run.

Finally, it should be noted that all counsel appearing at the inquest either expressly or impliedly acknowledged the Coroner's general commentary and recommendatory powers in that regard.

The role played by the Northern Territory government in relation to the planning and running of the Cannonball Run can be described as follows:

(1) Following consideration by the Cabinet of the Northern Territory Government of a feasibility study undertaken by Allan Moffat Enterprises Pty Ltd, the Chief Minister informed the Secretary of his Department on 8th March 1993 that the Government had entered into an arrangement with Mr Moffat and Mr McVean to stage a Cannonball Run from Darwin to Ayers Rock and back in May 1994.

(2) The Chief Minister directed that a steering committee be established to facilitate the running of the proposed event. The Chief Minister suggested that the committee be chaired by Mr Barry Chambers, then Deputy Secretary of the Department of Transport & Works, and include membership from the Department of the Chief Minister, Police, the Tourist Commission, Department of Law and the Department of Sport & Recreation. The Steering Committee comprised the following: Mr Barry Chambers and Mr Bernie Phillips (both from the Department of Transport & Works), Mr Brendon Cox (Chief

Minister's Office) Mr Bill Goedegebuurre, the Deputy Commissioner of Police, Mr Graham Aldridge (Northern Territory Tourist Commission), Robin Flannery (Department of Sport, Recreation & Ethnic Affairs), Mr Tom Jacobs (Department of Law) and Mr Rees Van Der Molen from the Motor Sports Council. It is clear that no member of the Steering Committee had any prior experience with an event like the Cannonball Run. It is equally clear that neither the Department of Transport & Works nor the Northern Territory Police or any other organ of government had been previously involved in any event like the Cannonball Run.

(3) The role actually performed by the steering Committee appears to have been purely facultative. Mr Chambers stated that the involvement of the members of the Steering Committee with Government was merely to execute the decision to conduct the Cannonball Run. Mr Chambers also described the function of the Committee as being to identify and co-ordinate the role of relevant Departments and establish a liaison between those Departments and the organisers of the event. The Committee had no executive powers and played no part in the structuring or programming of the event. It did, however, have input by way of reviewing the proposals of the organisers to ensure that they could be implemented with the minimum of disruption to the public. However, this review process was limited, and applied only where the rules proposed by the organisers might have an effect on the general public as distinct from the participants in the Cannonball Run. The following statement by Mr Chambers encapsulates the general approach:

"We were not there to determine whether they were good rules for competitors in a motor sport event. We had no expertise in that area as motor sports organisers. We restricted our view to how this would fit in with the general day to day life in the Northern Territory I guess."

Mr Goedegebuurre expressed his view of the function of the Committee in the following way:

"The purpose of the Committee was to make the run, the Cannonball Run happen and our duty was to look at our resources to see if we could cope with such

event."

(4) As to the work actually preformed by the Steering Committee the position is less clear. Counsel assisting the Coroner summarised the work of the Committee in the following terms:

"The only minutes that have been provided relate to a meeting held on 12 January 1994 having present Assistant Commissioner Chalker, Commander Green, and Superintendent Ey of the Northern Territory Police, Mr Bernie Phillips, and Mr McVean and Mr Fraser. Those minutes say that the meeting was not held along formal lines and, in essence, appeared to be a communication by McVean of the proposed enterprise with some discussion of salient points. It is obvious from perusal of those minutes that it was very much a preliminary meeting. Amongst other matters, the meeting was informed by Mr McVean that "each contestant would be screened before being permitted to enter the contest," that "times will be set for vehicles to travel to 160-170 kph with a maximum of 220 kph," and that the event will be conducted under international rules and the CAMS regulations although Mr McVean also stated "he was unsure at this stage whether a CAMS permit would be issued". The next set of minutes (B6) is dated 7th March 1994. Present at that meeting were Mr Goedegebuurre, Superintendent Ey, Mr Bernie Phillips, Mr John Duffy, Mr Doug Fraser and Melinda Dukic, an administrative assistant. That meeting covered a large number of relevant matters of a practical kind. In relation to the safety issues, the minutes noted that "speeds set for competitors are much lower than those done by Allan Moffat" and that all competitors would have route instructions which detailed, amongst other things, "maximum speeds". However, nothing in the minutes suggest what those speeds were or might be, or any mode by which those maximum speeds could be supervised."

Mr Chambers, in his statement, said that the Steering committee first met on 31 March 1993, and was briefed by Raceage on 20 May 1993. There were two meetings in January 1994. Raceage had by mid-1993 established a working relationship with each of the Departments, with each "Department fulfilling its normal role in Government".

One of the issues with which this inquest is concerned is whether the role actually performed by the Government in relation to the Cannonball Run accorded with the role reasonably expected of Government with respect to the planning and running of such an event. This is the normative aspect of the inquiry into the role performed by the Government.

It is patently clear that the Governments' involvement with the event did not result in any actual evaluation being undertaken of the critical issues of public safety that the running of the event raised. Those issues of public safety were (a) the speeds at which vehicles would be travelling during the course of the event and (b) the closure versus non-closure of roads during the running of the event. It would appear that the Government's failure to undertake an evaluation of such critical issues of public safety was influenced by a number of factors:

(1) It was doubtless considered that as there were no speed limits applicable to much of the proposed route of the Cannonball Run, the competitors were (subject to the law of the Northern Territory against driving in a manner or at a speed that was dangerous) legally entitled to drive at any speed they wished. Therefore, there appears to have been a perception on the part of the Government that it was not necessary for it to be informed of, and evaluate the safety implications of the speeds at which vehicles would be travelling during the Run.

(2) Reliance was placed upon the excellence of Territory roads and the perception that traffic was not a problem because it was of light density and;

(3) It was simply felt that any safety aspects of the event would be resolved by the involvement of Cams, and its interaction with the organisers of the event.

Any evaluation of the issue of speed by the Government was limited. It would seem that it was confined to an evaluation against personal knowledge of the Northern Territory roads, the condition of the roads and traffic volume. As to high speeds, say in excess of 200 kph, that was left to the expertise of the event organisers and Police (Refer to pages 76-78 above).

It is beyond question that the Northern Territory Government had the responsibility for ensuring public safety during both the planning and the running of the event. It is an unavoidable conclusion that the general parameters of the event, like the speeds at which vehicles would be travelling during the event and whether or not roads should be closed during the running of the event, were fundamentally matters for the Northern Territory Government to consider in the public interest. It is equally true to say that any issues of safety for competitors which were likely to impact upon public safety also fell within the domain of Government's responsibility.

Responsibility is a multi-faceted concept. In the present context the Northern Territory Government bore a responsibility in relation to the event in three senses: Firstly, the Government's decision to allow the running of the Cannonball Run should have been accompanied by a concern for consequences, and preceded by a process of prudent forethought and due consideration; secondly, the Government was accountable to the public of the Northern Territory in the sense that it was liable to account for or explain the general parameters within which the Cannonball Run was to be run; and thirdly, the Government had an obligation to ensure that the conditions under which the event were to be run were consistent with public safety. Clearly all three aspects of responsibility are inter-dependant.

In my opinion, the Northern Territory Government failed to discharge its fundamental responsibility which was to ensure public safety in relation to the planning and running of the Cannonball Run.

The role adopted and performed by the Government in relation to the proposed running of the Cannonball Run was the antithesis of the approach the Government should have taken. Such an approach would have involved a careful evaluation, either by the Government itself, or by direct consultation with independent experts, of the impact of the Cannonball Run on public safety, principally in terms of the speed at which vehicles would be travelling during the event, and public access to and use by the public of the roads during the running of the event.

The submission made by Mr Riley, Counsel appearing on behalf of the Government that the Government's responsibility in relation to the event was:

(a) To the public to ensure that the laws of the Northern Territory were complied with during the event (eg section 30 of the Traffic Act (NT) prohibiting driving at a speed or in a manner dangerous to the public), and

(b) To take such other necessary measures to protect users of public roads during the running of the event,

is a far too narrow view of the ambit of the Governments' responsibility. It ignores the Governments' responsibility for ensuring that the general parameters of the event (eg speed and public access to roads) were consistent with public safety, and in the public interest. Ensuring compliance with the law, and protecting the public during the running of the event is, in my opinion, a secondary responsibility internal to the event itself. This aspect of public safety could be, and was, it seems, adequately dealt with by the Government through the involvement of police. Similarly, the involvement of the Department of Transport and Works was internal to the event itself, and did not address the structure of the event. The Government failed to address its area of primary responsibility which was to ensure that the very structure of the Cannonball Run was consistent with public safety. The parameters of the event were left to the organisers and their interaction with Cams.

The establishment of a Steering Committee whose function was essentially to execute the Government's decision to conduct the Run was consistent with Government's narrow view of its responsibility in relation to the event, and exemplified its failure to carefully consider the staging of the Cannonball Run in light of the public interest. Either the brief of the Steering Committee should have been enlarged to evaluate the safety aspects of the Run, or a special evaluation committee should have been formed to co-ordinate a careful and detailed consideration of issues of public safety connected with the Cannonball Run.

It is no answer for the Government to say that it relied upon Mr Moffat's considerable experience in driving competitive vehicles and his and the other organisers careful attention to safety. Neither Mr Moffat nor the other organisers had any prior experience in organising an event like the Cannonball Run. In any event the Northern Territory Government could not, in effect, delegate the responsibility for public safety to the organisers of the event.

Nor is it an answer for Government to rely upon the particular circumstances of Cams' involvement in the lead-up to the Cannonball Run. There are a number of reasons for that conclusion:

- (1) Although the government relied upon the expertise of Cams, it failed to consult directly with Cams, and was content with Cams and the organisers negotiating and resolving the safety issues connected with the Cannonball Run.*
- (2) As late as March 1994, a little over 2 months before the Run, the Government was aware of the fact that Cams had various safety concerns in relation to the running of the event, and yet Government remained content to have Cams and the organisers continue to negotiate and resolve important issues of public safety.*
- (3) The Government presumed that the issue of a Cams permit a week or so prior to the Cannonball Run manifested Cams' approval of the manner in which the event was to be run, and an indication that Cams were satisfied with all safety aspects of the Run. Although that was not an altogether unreasonable presumption, it was not sufficient for the Government to rely solely upon that presumption for the purpose of discharging its primary responsibility for public safety in relation to the running of the Cannonball Run. It behoved the Government to inquire as to the conditions upon which the Cams' permit had been issued, and although entitled to rely upon the expertise and judgement of Cams, the Government had an obligation to satisfy itself that the overall structure of the event was consistent with public safety. It would have also been prudent for the Government to ensure, notwithstanding the issue of the permit, that there was consensus between Cams and the organisers as to the conditions under which the event was to be run. As it turned out that was not the case, notwithstanding the issue of the permit.*
- (4) By leaving important issues of public safety to be negotiated and resolved by the organisers and Cams, and by remaining on the perimeter of that process, the Government was not in a position to carefully evaluate either by itself, or by direct consultation with independent experts, like Cams, the impact of the Cannonball Run on public safety. Under those circumstances the Government failed to discharge its primary responsibility which was to ensure that the Cannonball Run would be*

held without compromising public safety.

Did the role assumed by the Government in relation to the planning and running of the Cannonball Run cause or contribute to the four deaths which occurred during the running of the Cannonball Run? That question squarely raises an issue of causation.

In light of the analysis of the accident it cannot be concluded that the failure of the Government to discharge its primary responsibility for public safety was either a causative or a contributory factor in the accident. The speed at which vehicles would be travelling during the Cannonball Run was clearly a matter of public safety. However, the high speed at which the Ferrari was travelling prior to the accident does not in itself account for the accident. The accident occurred as a result of the Ferrari attempting to enter the lay-by at a sharp angle and at a speed which was excessive in all the circumstances. The accident can squarely be put down to driver error. It is also important not to overlook the significant part played by Mr Castaldi's Lexcen. It's presence not only had the effect of slowing down the Ferrari, but contributed to Mr Kabe's driving error. Had the cause of the accident been attributed purely to excessive speed, then the causal nexus between the Government's failure to address public safety in terms of the speeds at which vehicles would be travelling during the Cannonball Run and the accident would have been more easily sustained. However, even if the accident had occurred in that way, the causal nexus may not have been sustained for the reason that an independent evaluation of the safety aspects before the event may have supported competing vehicles travelling at the same high speeds that were attained by vehicles in the Run.

The presence of the Lexcen, which was due to the road not being closed during the Special Section from Alice Springs to Stuart Well, could arguably be linked to the failure of the Government to discharge its primary responsibility for public safety, in terms of the issue of public access to roads during the event. As the presence of the Lexcen was a contributory factor in the accident, the failure of the Government to address the issue of public access to roads during the event, it might be argued, was also a contributory factor. Such an argument must fail because it may well be that had an independent evaluation of the safety aspects of the Run been undertaken by the Government, the outcome may have been in favour of the roads remaining open during the running of the event. It is very much to the point that Cams were content with the roads remaining open subject to

certain speed restrictions.

? 140 km/h

Although no causal relationship between the Government's failure to discharge its fundamental responsibility in relation to public safety and the accident can be established, it remains entirely appropriate for the Coroner to make recommendations pursuant to Section 35(2) of the Coroners Act on matters of public safety arising out of the planning and running of the 1994 Cannonball Run. I will attend to those recommendations later.

THE INVOLVEMENT OF CAMS

I am satisfied on all the evidence that the approval of Cams was not a legal requirement for the event. Minutes made by Superintendent Ey in relation to a meeting held in the Commissioner's Conference room on the 12th January 1994 attended by the Assistant Commissioner Chalker, Commander Green, Superintendent Ey, Mr Phillips from Transport & Works and Mr McVean and Mr Fraser, read as follows in relation to Cams' involvement:-

"McVean advised the event will be conducted under International Rules and the "Cams" regulations, but also stated that he was unsure at this stage whether a "Cams" permit would be issued. Police were assured, however, that there was no requirement for a permit for the event to take place."

At page 533 of the Transcript Mr Chambers gave evidence making it clear that he knew that Cams' sanction of the event was not a legal requirement.

Due to the fact that the approval of Cams was not a legal requirement for the event, the role of Cams in relation to the staging of the Cannonball Run was somewhat ill-defined.

It appears from the "feasibility study" put to the Northern Territory Government by Racecage that the organisers considered that Cams involvement was imperative. However, at no time did either the Government or Racecage tell Cams that it considered its approval of the event to be "imperative." It is not easy to determine what was meant by "imperative." However, as the event drew near, the position taken by the organisers appears to have been that it would be ideal if the event had Cams' approval, but that the event would proceed if Cams did not sanction the event. That was entirely consistent with Cams' approval not being a legal requirement for the event.

It would appear that the involvement of Cams in the event was at the instigation of Raceage. Thereafter, Cams became involved in a process of correspondence with both Raceage and the Chief Minister of the Northern Territory. The chronology is as follows:

- (1) Mr Keys, manager of the Technical Services Division of Cams wrote to the organisers on several occasions.*
- (2) The Cams' letter written by Mr Keys to Mr Moffat dated 3rd March 1994 (Exhibit 28) made it clear that the official and non-negotiable position of Cams was that a maximum average speed of 140 kph should be set for the special sections of the Cannonball Run. The letter of 3rd March 1994 was written and sent pursuant to a resolution made by the National Executive of Cams on 28th February 1994.*
- (3) On 3rd March 1994 the Deputy Chief Executive Officer of Cams' corresponded with the Northern Territory Chief Minister. The Chief Minister then wrote to Cams by letter dated 10th March 1994.*
- (4) Following receipt of the Chief Minister's letter, Cams forwarded a Permit Application Form to Mr Moffat.*
- (5) On 7th April 1994 Cams' Deputy Chief Executive Officer wrote to the Chief Minister in the following terms:*

"The National Council of Cams is most insistent in its direction to the staff that this exciting event should be an authorised event, your comprehensive letter resolved a number of concerns about safety.....

I have instructed the staff to give every consideration to the Organisers, which is, perhaps, unnecessary as we all hold Moffat in high regard. I am also encouraging the staff to be most active in terms of seeking discussion with the Organisers as those are still matters to be resolved, with little time available."
- (6) Mr Ritchie confirmed the status of the Cannonball Run as a Cams sanctioned event by endorsing the letter from Raceage dated 17th May 1994.*

(7) Cams issued the permit for the Cannonball Run on 18th May 1994.

However ill-defined the role of Cams may have been at the outset it is clear from its letters of 3rd March 1994 and 7th April 1994 that Cams made its position clear, first, in terms of insisting that the Cannonball Run should be an authorised event (ie authorised by Cams) and secondly, in terms of officially on a non-negotiable basis, setting its conditions for the running of the event. However, in that regard Cams largely dealt direct with the organisers of the Run in a process of negotiation rather than as an independent party with relevant expertise, which stood between the Government and the organisers, and which undertook an objective evaluation of the safety parameters of the event. Cams' role in relation to the proposed event was misconceived, though through no fault of Cams. Cams was never invited to assume the role of an independent evaluator.

Somewhat of a mystery surrounds the issue of the Cams' permit on 18th May 1994. The issue of the Cams' permit raises a number of inferences:

(1) That given that the event was ultimately run without maximum average speeds Cams had prior to issuing the permit re-appraised its safety concerns raised in its letter of 3rd March 1994 to Mr Moffat.

(2) That as at the date of the permits' issue Cams was satisfied that its safety concerns with the event had been resolved and

(3) That the format of the Cannonball Run was safe in all respects.

However, after a careful analysis and assessment of all the evidence, I consider that scenario, based as it is on a number of inferences only, to be unlikely. It is more likely than not that the Organisers and Cams each had a contrary understanding of the conditions (for eg maximum average speeds, flying finishes, helmets) upon which the permit had been issued. The permit, and hence the sanctioning of the event, had been given on the basis of a misunderstanding between the parties.

Mr Keys refuted the suggestion that he knew that there was "no mandated provision for average maximum speeds" on the special sections of the Cannonball Run. Quite to the

contrary he gave the following evidence:

"It's my understanding that when the event started, all the special sections would have a maximum average speed limit of 140 kph imposed on them."

The transcript of the conversation between Mr Bell, Mr Keys and Mr Schenken on 24th May 1994 (part of Exhibit 33) which follows lends some weight to Mr Key's understanding that an average maximum speed of 140 kph was a mandatory requirement of the Cams' permit:

TS. Had they been setting very high limits on these special stages.

MB. no they weren't

TS. So what sort of average...

MB. They complied with all the information that Bruce had been sending them so

BK. So what, their average was 140 to?

MB. Something like that, I can't tell you exactly because we haven't been getting the averages but we will certainly find out that for you. But they are low.

TS. OK well that's a positive point."

It is true that the "Further Supplementary Regulations" drafted by Mr Keys, and transmitted by fax to the Organisers on 18th May 1994, did not contain any requirement that there be a mandatory maximum average speed of 140 kph in the special sections. It is equally true that the Cams' permit bore no endorsement as to speed restrictions. However, whilst these omissions are consistent with there being no "mandated provision for average maximum speeds, they are equally consistent with the assumption that the official non-negotiable position outlined in Cams letter of 3rd March to Mr Moffat stood. It was not unreasonable, in my opinion, for Mr Keys to rely on the contents of that letter, in the absence of any written response to the contrary from the Organisers.

What must not be overlooked is Mr Schenkens' communication to Mr Keys that Mr Moffat had advised him (ie Mr Schenken) on 21st April 1994 in the following terms:

"We've pulled the event back and introduced speed limits."

It is true that Mr Keys did not instruct Mr Bell, the Chief Cams' Steward attending the Cannonball Run, that the organisers had agreed to a maximum average speed of 140 kph as previously required by Cams. However, in light of all the other evidence, and in particular Mr Key's assertion that a maximum average speed of 140 kph applied, that omission on the part of Mr Keys does not establish that Cams had re-appraised its safety concerns as at 3rd March 1994, and revised its position on a maximum average speed of 140 kph for the Special Sections.

The Cams' media release following the accident, which emphasised Cams' requirement that a maximum average speed of 140 kph be placed on all open sections of the event, is further evidence of the apparent misunderstanding between Cams and the organisers over the conditions upon which the event was sanctioned.

That a misunderstanding between Cams and the Organisers occurred is too difficult to accept, given the circumstances which surrounded the negotiations between Cams and the Organisers preceding the issue of the Cam's permit. Mr Keys could well have assumed that, in the absence of a written response from the organisers disagreeing with the mandatory maximum average speeds, and taking into account Mr Moffat's comment to Mr Schenken that he "had pulled the event back and introduced speed limits", the organisers were prepared to accept a maximum average speed of 140 kph. On the other hand, the Organisers who were adamant that they would not accept a maximum average speed of 140 kph, and who clearly intended not to reply to the letter of 3rd March, may well have taken the view that Cams were not persisting with their earlier requirements when they issued their permit on an apparently unconditional basis.

That there was a misunderstanding on the part of Cams is also not surprising in the circumstances inasmuch that different Cams' officials were involved in the administrative process which culminated in the issue of the permit. Mr Keys wrote the letter of 3rd March 1994 to Mr Moffat. Mr Schenken had a conversation with Mr Moffat during which Mr Moffat told Mr Schenken that the event had been pulled back. Mr Ritchie confirmed the status of the Cannonball Run as a Cams' sanctioned event. Mr Ritchie personally believed, at the time he endorsed the Cams sanctioning of the event, that outstanding

issues as to speed had been resolved by someone else in Cams. The actual permit was signed by yet another Cams' official, the Secretary of the National Executive. It is an unavoidable conclusion that during the entire process which led to Cams' sanctioning of the event there was an appalling lack of communication between each of the officials involved in the process. Such administrative inefficiency within the organisation of Cams led to the issue of the permit on an erroneous basis.

Apart from the matter of maximum average speeds there also appears to been some confusion between Cams and the organisers of the event concerning the wearing of safety helmets.

The "Supplementary Regulations Manual" (Exhibit 16, page 8 clause 3) required that safety helmets be worn "in all competition sections of the Run" (ie in the Flying Mile Challenges and the Special Sections. There was no requirement to wear safety helmets during the touring stages. The "Supplementary Regulations Manual" (Exhibit 38, page 8 clause 3) contained the same provision as that contained in Exhibit 16).

The provisions in these two documents, referring to the wearing of safety helmets, was in contrast to the "Rules, Procedures and Supplementary Regulations Manual," (Cams' document 35 of Exhibit 16) which was posted to competitors in late March, and which removed any mandatory requirement for the wearing of safety helmets, and recommended that helmets be worn only in the Flying Mile Challenges.

"Further Supplementary Regulations" (Cams document 42 of Exhibit 16) which accompanied the permit issued by Cams were drafted by Mr Keys. Clause 7 (f) (page 8 of the document) referred to a judge of fact in relation to the failure of a competitor to wear a safety helmet. When drafting the "Further Supplementary Regulation" Mr Keys believed that the earlier "Supplementary Regulations Manual" applied, and the wearing of helmets was required "in all competition sections of the Run."

Mr Key's explanation for the oversight was set out in paragraph 45 of his statement (Exhibit 35). He said:

"It appears that I was referring not to the final regulations but to the draft

regulations and I am unable to explain this oversight other than to say I must have had the draft regulations and not the final regulations before me when I drafted this part of the 18th May Regulations".

Mr Keys offered a similar explanation for the oversight in the oral evidence he gave at the inquest.

In any event, whilst he believed helmets ought to have been mandatory for the Flying Mile Challenges, Mr Keys accepted that there were reasons for and against making safety helmets compulsory for the Special Sections.

Mr Bell, the Chief Steward appointed by Cams for the Cannonball Run, was of the view that the "Rules Procedures and Supplementary Regulations Manual" applied, which did not require the wearing of safety helmets during any section or stage of the Cannonball Run.

The apparent confusion as to any requirement that safety helmets be worn during the Cannonball Run once again demonstrates an inattention to detail on the part of Cams, and does not reflect favourably upon an organisation which is the peak body for motor sports in Australia.

There also appears to have been some confusion as between Cams and the organisers over the type of finishes to be adopted in the Cannonball Run.

Cams claimed that it was not alerted, or properly alerted, to the kind of finish which the organisers intended to adopt for all special sections of the Cannonball Run. It is difficult on the evidence to determine whether or not the organisers informed Cams that they intended to use "flying finishes" throughout the special sections of the Run. However, it is not necessary for me to make any finding of fact in that regard, because assuming the organisers did not alert Cams as to the type of finishes to be used in the Run, it behoved Cams as the sanctioning body for the Run, to properly satisfy itself as to the type of finishes that were to be adopted, and whether those proposed finishes met the safety requirements of Cams.

Any confusion which might have been engendered by conflicting sets of Regulations could

have been removed by Cams being more diligent in satisfying itself as to the final form of the Regulations, and indeed issuing its permit on the basis of a set of conditions (including the type of finishes to apply in the Cannonball Run), those conditions being explicitly referred to in the permit itself.

Quite apart from that, Mr Bell had observed some earlier special section finishes where a stop-finish had been adopted. Notwithstanding that the stop-finishes occurred in restricted speed zones, the very fact that stop-finishes were being used should have sounded warning bells (as to the type of finish to be used at Stuart Well) in Mr Bells' mind, and vicariously in the mind of Cams, who was being represented at the Run by Mr Bell.

The misunderstanding that occurred over maximum average speeds and the apparent confusion as to the wearing of safety helmets and the use of flying finishes could have been easily avoided by: (a) a more unified and concentrated approach on the part of Cams to its dealings with the organisers and (b) endorsing on the permit the conditions upon which the event had been sanctioned.

As stated above Cams' involvement in the Run was misdirected. Had Cams been invited by the Northern Territory Government to act in the capacity of an independent evaluative organisation, in addition to a body that might sanction the event, the scope for any misunderstanding or confusion in relation to the conditions upon which the event was to be run would have been considerably reduced.

I do not consider that any misunderstanding Cams had or any confusion on its part as to the conditions under which the Cannonball Run was to be conducted in any way contributed to the four deaths. Firstly, the analysis of the accident shows that to the extent that speed was a factor, the speed at which Mr Kabe entered the lay-by was unlikely to have been outside the parameters of the maximum average speed of 140 kph. In any event, a significant contributory factor in the accident was the presence of Mr Castaldi's vehicle. Secondly, although it is clear that given the presence of Mr Castaldi's vehicle the particular accident would not have occurred had a flying finish been adopted at the checkpoint, (see below at page 222) the presence of the Lexcen was a primary and indispensable factor. Furthermore, the matrix of circumstances surrounding the accident were not reasonably foreseeable. Thirdly, although the lives of the occupants of the

Ferrari may have been saved had they been wearing helmets, there is a respectable body of opinion opposed to the wearing of helmets in events like the Cannonball Run. Indeed Mr Keys, himself, accepted that there were reasons for and against making the wearing of safety helmets mandatory for the Cannonball special sections. All things considered the organisers did not act unreasonably in not requiring safety helmets to be worn during the Special Sections. It is true in a strict sense that had the wearing of helmets been made mandatory for the special sections Mr Kabe and Mr Okano may shall be alive today. However, I am not inclined to be over-critical of Cams' apparent misapprehension that helmets were required to be worn during competitive sections and of their failure to prevent any such misapprehension occurring, for four reasons: Firstly, cogent reasons were advanced for not requiring helmets to be worn; secondly I do not believe that the organisers acted unreasonably in not requiring helmets to be worn; thirdly as to whether the wearing of helmets for future events will be made mandatory remains a very live issue; fourthly, it is by no means certain that had the matter of helmets been raised prior to the event any independent evaluation of the issue (including an evaluation by Cams) would have resulted in the mandatory wearing of helmets.

THE ORGANISERS

Although the organisers stated that the involvement of Cams in the event was imperative, it is abundantly clear that the Organisers were committed to the idea of running the Cannonball Run, with or without the sanction of Cams.

The organisers held firm views as to the appropriateness of the speeds at which vehicles would be travelling during the event. The Cams' proposed speeds were unacceptable to the organisers because if the proposed speeds were imposed it would deprive the event of the excitement of high speed, which was unquestionably an essential element in the Cannonball Run, and would in effect render the Run a non-event. Indicative of their attitude on the question of speed was the clear decision of the organisers not to reply to the Cams' letter of 3rd March 1994 in such a way as to clearly set out their disagreement with Cams' proposed average maximum speed of 140 kph for the Special Sections.

In my opinion the Organisers lacked the relevant expertise to properly analyse and evaluate the issue of speed as one of the parameters of safety in the Cannonball Run. As Counsel assisting the Coroner put it:

"The very controversy that has been agitated in this inquiry by the material from Cams shows how value-laden and difficult the question of safety is."

However, that is not to say that the organisers did not take the issue of safety seriously. Despite the initial publicity that surrounded the Cannonball Run, emphasising the excitement of unrestricted speeds on open roads, the Organisers, in my opinion, responsibly steered the proposed Cannonball Run towards a controlled motor sport event and not a race. Safety was emphasised. However, the problem was that despite their high level of safety consciousness, the organisers lacked what really counted - the ability to properly evaluate and arrive at a satisfactory resolution of all safety concerns in relation to the Cannonball Run. Quite apart from that they, as would be expected, were "too close to the event."

It is noted that the Organisers did undertake some assessment of traffic density on Northern Territory roads to evaluate the safety aspects of leaving roads open during the running of the special sections of the Cannonball Run. However, that research was not sufficiently far reaching. The measures taken by the organisers to time the running of special sections so as to avoid certain heavy transport traffic using the Stuart Highway was commendable. However, no additional measures appear to have been taken to avoid a volume of other commercial traffic and private individuals using the Stuart Highway from time to time.

The Organisers, and even taking into account Mr Moffat's vast experience in motor sports, did not collectively have the relevant expertise to stage such a unique event as the Cannonball Run in such a way as to ensure the safety of the public.

In my opinion, nothing done or omitted to be done on the part of the organisers can be properly said to have contributed to the accident. The accident, taking into account all the surrounding circumstances was unforeseeable, even "freakish".

The decision not to impose a maximum average speed of 140 kph for the special sections did not contribute to the accident for the reasons already given.

The organisers had decided, for reasons which they considered sound, not to adopt flying finishes for the special sections. Although the accident would have been avoided if a flying finish had been used, the paramountcy of the Lexcen is a factor must not be overlooked. In any event, the use of flying finishes in future events remains a live issue. It would be both unsafe and unfair to link in any causative sense the decision of the organisers not to have flying finishes to the accident. Although strictly speaking on the balance of probabilities the absence of helmets caused or contributed to the deaths of Mr Kabe and Mr Okano, the decision made by the organisers not to make the wearing of helmets mandatory during the special sections was both reasonable and responsible.

As for the two marshals who died at the checkpoint as a consequence of the accident which occurred at the checkpoint, I consider that given the unforeseeability of the accident, the organisers had taken all reasonable steps to ensure their safety. However, with the benefit of pure hindsight, the installation of a chicane at the checkpoint may have offered the two marshals more protection.

Was sufficient care taken by the organisers to ensure that competitors had driving skills appropriate to the demands of the event?

Entrants in the Cannonball Run were subjected to questioning in relation to their experience during a screening process. However, it seems that that somewhat informal and less than systematic process mainly concentrated upon the maturity and attitude of potential participants in the event. It is fair to say that the process did not involve driver testing.

Mr Moffats' opinion that if driver testing had been a requirement of entry to the Cannonball Run Mr Kabe would have passed the test. The evidence shows that Mr Kabe had had experience of driving Ferraris at high speed on racing circuits. There was, however, no evidence enabling an assessment to be made of Mr Kabe's defensive driving skills ie driving skills in an emergency situation. Whether or not Mr Kabe possessed such skills will never be known, and whether or not he would have passed a preliminary driver test would depend on the depth of that test.

It is fair to say that the organisers of the Cannonball Run did not have available to them any real models to follow in terms of screening participants. At no time had Cams

recommended any system for testing the driving ability of entrants in the event. However, the system of driver assessment adopted by the organisers of Targa Tasmania was undertaken for the first time in April 1994, a month or so prior to the running of the Cannonball Run. It would seem that Cams has not yet endorsed such driving testing as a requirement for that event.

Given the unique character of the Cannonball Run, and the absence of any precedent to guide the organisers, I consider that the organisers exercised sufficient care in the screening of entrants, though, in hindsight with the benefit of the evidence adduced at the inquest, the selection process could have been more intensive.

RECOMMENDATIONS

The four tragic deaths which occurred during the running of the 1994 Inaugural Cannonball Run, together with general safety concerns in relation to the event, raise one obvious question: should there be another Cannonball Run?

Although a voluminous mass of evidence, both expert and lay, was heard and tendered at the inquest, that substantial body of evidence, in particular the expert evidence, is not sufficient in qualitative terms to yield a definitive answer. Therefore, I am unable to make any specific recommendations as to whether or not there should be a second Cannonball Run. I do, however, recommend that the subject be reviewed, and I make the following recommendations as to the manner and content of such a review.

This inquest has raised a number of very important concerns in relation to the infrastructure of the 1994 Cannonball Run. If another Cannonball Run is to be staged it is imperative that there be a comprehensive review of the events' infrastructure. Without limiting the generality thereof the infrastructure includes such matters as:

- (a) Maximum speeds or maximum average speeds of vehicles participating in the event*
- (b) the closure or non-closure of roads during the running of the event*
- (c) The assessment of drivers participating in the event*

- (d) *The organisation of finishes at the end of special sections and*
- (e) *The wearing of helmets.*
- (f) *Signage and route instructions.*

There are two distinct aspects to such a review. The first concerns the means by which the review would be undertaken (the methodology) and the second relates to the content of such a review (the substantive aspect).

THE METHODOLOGY

The review process should be the antithesis of the processes which preceded the running of the 1994 Cannonball Run.

I would recommend that before considering a further Cannonball Run that there be a detailed review and evaluation of the infrastructure of the event by an independent expert or body of experts. The expert or body of experts should be independent in the following senses:

(a) *The person or body concerned should not be drawn from the ranks of either the Northern Territory Government nor the organisers of the event. This should not pose a problem as it is patently clear that no-one in the Government nor the organisers, either individually or collectively, had the relevant expertise to undertake an evaluation of the type envisaged. Cams is an appropriate body of experts that readily comes to mind. However, that is not to say that there are not other persons or bodies that might adequately meet the description of an independent expert.*

(b) *It matters little whether the independent expert or body of experts is called upon by either the Northern Territory Government or the organisers of the proposed event to evaluate the event's parameters. The crucial aspect is that the expert(s) undertake a wholly impartial and considered review and evaluation of the event, and that any such review and evaluation is made available prior to any decision being made by the Northern Territory Government sanctioning the running of a second Cannonball Run.*

(c) *By implication an independent review and evaluation should not involve the person or body undertaking the review and evaluation in a process of negotiation with other parties. The real problem with the processes that preceded the 1994 Cannonball Run was that Cams, which was potentially an independent body of experts, and a valuable resource for assessing the parameters of the Cannonball Run, descended into the arena of negotiations, which regrettably compromised any capacity it had to collect its independence of thought, and to co-ordinate its resources to undertake an objective assessment of the Cannonball Run. However, it is far too harsh to criticise Cams for the role it adopted, as neither the Government nor the organisers took steps to define Cams' role, and request it to undertake an independent assessment of the event.*

Whoever might be called upon to undertake a review or evaluation, it is obvious that the individual or body must be a relevant expert. The expert should co-ordinate all available resources to thoroughly familiarise itself with Northern Territory road conditions and traffic use with a view to making a proper evaluation of the degree of risk to other users of the road during the running of an event like the Cannonball Run. There is nothing wrong with the expert, who is assigned the task of undertaking the evaluation; accessing relevant information held by either the Government or the organisers of the proposed event, and utilising any areas of relevant expertise possessed by either of those parties..

THE SUBSTANTIVE ASPECT

Any review and evaluation of the event should at the minimum be directed at and resolve each of the following substantive issues.

The issue of speed

If it were not for the existence of derestricted speed zones in the Northern Territory, the Cannonball Run would not have been a viable concept and probably never eventuated. Given that the event was predicated upon the absence of speed restrictions on Northern Territory roads, the idea of imposing maximum speeds or average maximum speeds for the event may at first sight appear to be inherently contradictory.

However, there was at least one body of opinion in existence prior to the running of the event (which cannot be rejected out of hand) that saw no contradiction in setting a maximum average speed of 140 kph for the special sections of the Cannonball Run. As

early as 9th December 1993, when writing to Mr Fraser, Cams had stated as follows:

".....it probably comes as no surprise to hear that Cams' major concern is the speed at which the competitors will be travelling in this event.

We understand that there are no speed limits in the Northern Territory, and that one could quite legally drive a (for instance) McLaren F1 sports car at 280 kph and without fear of being prosecuted by the Government authorities, at least in so far as speeding is concerned.

Whilst the Northern Territory Government may not be concerned regarding one car doing this, I'm sure you agree that there is a big difference between a single instance, and a group of 150 competitive cars at 30 second intervals, (all trying to beat the car in front) and that the probability of something going amiss is going to be many folds greater.

Cams is certainly very concerned at the higher potential danger in this event (in relation to other "traditional" road events), and as the controlling body of motor sport in Australia. We have a duty to not only the rest of our fraternity, but to the community to always provide a safe environment in which the sport may be conducted.

In short we are concerned at what will happen if something "goes wrong".

It is true that the concept of the Cannonball Run evolved into an event rather than a race, and therefore Mr Key's comment about vehicles trying to beat the car in front does not remain apposite. The evidence adduced at the inquest does not support a finding that vehicles were racing each other during the event. It was also the case that fewer vehicles were involved in the actual Run than initially envisaged, and vehicles departed at longer intervals. However, the general substance of Mr Key's comments remains apposite on the question of speed.

Later in his letter of 9th December Mr Keys stated that in order for the issue of a permit to be considered, inter alia, the competitive stages of the Cannonball Run would have to be held on roads closed to the public and governed by a maximum average speed of 130

kph. Such a statement once again does not acknowledge any contradiction in imposing speed limits (ie in the sense of average speeds) in a Territory where there are no legal speed limits on the open road.

The letter of 3rd March 1994 from Cams to Mr Moffat which imposed the setting of a maximum average speed of 140 kph for the "Cannonball Special Sections", which was stated to be non-negotiable, was a further and final tacit acknowledgment that there was no contradiction in imposing some speed restrictions for an event on open roads which were not subject to legal speed limits.

There was no speed limit imposed on the Special Section from Alice Springs to Stuart Well on Day 3 of the Cannonball Run. However, competitors in each category were informed that they would need to achieve a particular average speed over the section to arrive at the checkpoint within a set time. The average speed for each category was as follows:

Category 1 198 kph

Category 2 171 kph

Category 3 142 kph

Those averages invite a number of observations. First, it was clear that at times competitors would need to travel faster than the average speed set for each category. There was always the distinct likelihood that in the derestricted zone competitors would not be able to maintain a constant speed equivalent to the average speed required for the journey because of the presence of slower public traffic, and the need to decrease speed to safely negotiate bends and curves on the open road. Therefore, it was anticipated that in each category vehicles would at times achieve speeds greater than the set average speed. Hence, the Court heard evidence of both the Porsche and Ferrari doing speeds at times in excess of 230 kph. The Porsche arrived at the checkpoint within time, and so would have the Ferrari but for the accident.

Secondly, although the average speed set for each category over the special section was not expressed in terms of a maximum, that was the effect of the average speed set. If competitors exceeded the average speed they would arrive early at the checkpoint, and be penalised accordingly.

Thirdly, it is acknowledged that to a certain extent the averages set for the special section from Alice Springs to Stuart Well affected the top speed a vehicle would need to travel at times in order to maintain the required average speed over the section. The trouble is that the maximum speed a vehicle would need to reach from time to time to maintain its average speed was uncertain, and depended largely upon the incidence of slower public traffic which would inevitably slow competitors down and, in all probability, substantially below the average speed required for the section.

For the reason that average speeds will not always equate with the top speed of a vehicle Cams no doubt imposed a maximum average speed of 140 kph, thereby attempting to place some restriction on the top speed achieved by vehicles participating in the Cannonball Run. However, for the reasons given above, even imposing a maximum average speed of 140 kph did not set a definite ceiling on speed. Therefore, the setting of maximum average speeds provides only an imprecise control on the maximum speeds at which vehicles might travel.

In relation to the 1994 Cannonball Run the legal prohibition on dangerous driving (Section 30 of the Traffic ACT (NT)) was an even more imperfect control on the maximum speed of vehicles taking part in the event.

The offence of dangerous driving can be constituted either by driving at a dangerous speed or by driving in a manner dangerous. The test of liability for dangerous driving is objective and impersonal. The test does not depend on the state of mind of the driver at the time of the alleged offence. Proof of any given state of mind is not an essential element of the offence. The focus is on the actual behaviour of the driver at the relevant time. As the High Court held in R v Coventry (1983) 59 CLR 633 at 637):

"The standard is an objective standard 'impersonal and universal, fixed in relation to the safety of other users of the highway.' The standard is impersonal in the sense that it does not vary with individuals, and it is universal in the sense that it is applicable in the case of all who drive motor vehicles."

As stated in Virgo v Elding (1939) SASR 294 at 296 the standard of care required to establish dangerous driving "is not what a person charged may only be capable of

exercising, but what is expected of the ordinary prudent driver."

McBride v R (1966) 115 CLR 44 at 49) is authority for the proposition that the offence of dangerous driving requires "some serious breach of the proper conduct of a vehicle upon the highway". The offence of dangerous driving is readily distinguishable from an offence of careless driving. Whilst both offences are predicated upon a departure of standard from that required of a careful and competent driver, the difference lies in the degree of departure from that standard. As observed in R v Duncan (1953) 11 SASR 592N careless driving represents a "minor departure" from the required standard whereas dangerous driving amounts to "a gross departure" from the standard. Dangerous driving focuses upon the danger caused by the driving to the public, careless driving is less concerned with danger, and although careless driving maybe dangerous, all careless driving is not necessarily dangerous. Finally, dangerous driving appears to be centred upon some positive conduct on the part of the driver, whereas careless driving is more concerned with a failure or omission on the part of the driver.

Fault is an essential element in a prosecution for dangerous driving. The offence is neither absolute nor strict in the sense that an otherwise blameless driver is liable if the outcome of his driving is a dangerous situation or manoeuvre. In R v Gosney (1971) 3 ALLER 220 at 224 the Court held:

"In order to justify a conviction (for dangerous driving) there must be, not only a situation which viewed objectively, was dangerous, but there must also have been some fault on the part of the driver, causing that situation. 'Fault' certainly does not necessarily involve deliberate misconduct or recklessness or intention to drive in a manner inconsistent with proper standards of driving. Nor does it necessarily involve moral blame. Thus there is fault if an inexperienced or a naturally poor driver, while straining every nerve to do the right thing, falls below the standard of a competent and careful driver. Fault involves a failure; a falling below the care or skill of a competent and experienced driver, in relation to the manner of the driving and to the relevant circumstances of the case. A fault in that sense, even though it might be slight, even though it be a momentary lapse, even though normally no danger would have arisen from it, is sufficient. The fault need not be the sole cause of the dangerous situation. It is enough if it is, looked at sensibly, a cause.

Such a fault will often be sufficiently proved as an inference from the very facts of the situation. But if the driver seeks to avoid that inference by proving some special fact, relevant to the question of fault in this sense, he may not be precluded from seeking to do so."

There is ample authority in Australia for the proposition that fault is an essential element in dangerous driving (See R v Coventry supra); Smith v R (1976) WAR 97; R v Mayne (1975) 11 SASR 583; R v Cripps (1958) Tas SR 476 and Moss v Kimber (1986) 4 MVR 380 (WA). Although there must be fault, it is not necessary for the prosecution to prove that the driver had actual knowledge of the danger.

Section 30 of the Traffic Act states that in considering whether a offence of dangerous driving has been committed the Court shall have regard to all the circumstances of the case, "including the nature, condition and use of the public street or public place on which the offence is alleged to have been committed, and the amount of traffic which was or might reasonably have been expected to have been, on that public street or public place at the time." The wording of the section suggests that other factors may be taken into account, for example the speed of the motor vehicle, the observance of traffic signals, and the condition of the driver's vehicle, especially if he knew the vehicle was defective (See R v Coventry generally). Where dangerous driving is concerned there is an infinite number of different circumstances which the Court may have to consider.

That all the circumstances of the case must be taken into account means that in fixing the standard of care that an ordinary prudent driver would have observed, the particular predicament of the driver at the material time is relevant. Therefore, any advantages which the driver's manner of driving was likely to accrue to himself or other persons must be weighed by the Court against the danger, either actual or potential, created by the driving (See R v Lucas (1973) VR 693 at 700. R v Stephenson (1976) VR 376).

In order to establish the offence of dangerous driving it is necessary to prove that the acts of the driver created a danger, real (actual) or potential, to the public. Advertence to the danger on the part of the driver is not an essential element of the offence. Whether or not actual or potential danger exists depends upon all the circumstances of the case.

In order to establish the offence of dangerous driving it is sufficient if a member of the public is put in actual or potential danger. In McBride v R (supra at 50) the High Court held that proof of dangerous driving (whether at a dangerous speed or in a manner dangerous) did not depend upon resultant damage:

"Whilst the immediate result of the driving may afford evidence from which the quality of the driving may be inferred, it is not that result which gives it that quality. A person may drive at a speed or in a manner dangerous to the public without causing any actual injury: it is the potentiality in fact of danger to the public in the manner of driving, whether realised by the accused or not, which makes it dangerous to the public."

The High Court also stated in McBride v R (at 49) that the expression "a speed or manner which is dangerous" imports a quality in the speed or manner of driving which either intrinsically in all the circumstances, or because of the particular circumstances surrounding the driving, is in a real sense potentially dangerous to a person or persons who as a member or as members of the public may be upon or in the vicinity of the roadway upon which the driving takes place.

The phrase "in a manner" encompasses all matters relating to the management and control of a vehicle whilst it is being driven. R v Coventry is authority for the proposition that dangerous driving can be constituted by casual behaviour on the road and momentary lapses of attention, if they result in danger, actual or potential, to the public.

Unlike the offence of exceeding the speed limit (which is purely a question of measurement), driving at a speed which is dangerous to the public is determined by reference to all the surrounding circumstances. There is no rule about the precise speed which will constitute driving at a speed which is dangerous to the public. (Armstrong v Twiggs (1985 MVR 217 (SA)). As with driving in a manner dangerous, it is necessary in the case of a charge of driving at a speed dangerous to prove that, in all the circumstances, the driving in question exceeded the point where it represented a mere departure from the ordinary rules of the road, and crossed over into a serious departure from the rules, thereby creating both a totally unreasonable and unwarranted danger to other users of the road. Two factors are involved in assessing the danger created by a

course of driving:

(1) the degree of risk that something untoward will occur and (2) the degree of risk that should something untoward occur, the damage caused will be more serious (See Pope v Hall (1982 30 SASR 78 at 79).

The term "dangerous to the public" refers to other persons using the roadway.

The very existence of an offence of driving at a speed dangerous is a clear acknowledgment that notwithstanding the absence of speed limits on the open roads of the Northern Territory speed in certain circumstances can be unsafe. There is an infinite number of circumstances where driving at high speed might constitute dangerous driving. Three illustrations will suffice:

Example A.

A competitor in the Cannonball Run travelling at 200 kph negotiates a bend not knowing what is around the bend. Unbeknown to the competitor a civilian vehicle has stalled. On sighting the stationary vehicle the competitor attempts to take evasive action. One possible scenario is that he is unsuccessful and collides with the rear of the other vehicle with fatal consequences. Another scenario is that he swerves to the right of the carriageway, avoiding a collision with the stationary vehicle, but collides head on with another vehicle travelling in the opposite direction.

Example B.

Another competitor in the Cannonball travelling at 200 kph is suddenly confronted with stock which has strayed onto the roadway. The competitor is unable to stop in time, and takes evasive action by swerving to the right of the carriageway. In so doing he narrowly misses another vehicle coming in the opposite direction which has been forced off the road to avoid a collision. A far worse scenario is that during the evasive manoeuvre the competitor collides head-on with the vehicle coming in the opposite direction.

Example c.

Example C is the example given by Counsel assisting the Coroner:

"Mr Tourist, in an average sedan containing his average family and towing his

caravan at an average speed of, say, 90 kph, is driving towards Alice Springs. He comes up behind a triple road train 50 metres long and travelling at the mandatory 80 kph and then waits for an opportunity to pass.

He sees what he believes to be a long, straight clear road and pulls out to overtake. Because of his load and towing a caravan, his rate of acceleration is quite slow and, assuming that he can accelerate to 100 kph, it will take him about 22 to 26 seconds to pass the road train and return to his correct side of the road.

In that time, a Cannonball car is approaching at 200 kph, giving a closing speed of 300 kph or 11.9 seconds per kilometre. Mr Tourist started his overtaking manoeuvre with an apparently clear road ahead. He suddenly finds himself on a collision course with the Cannonball car before he can possibly return to his correct side of the road. It is also too late to assess what the Cannonball driver's skills are at defensive driving at 200 kph."

In each of the above examples speed is a critical factor, and dangerous in all the circumstances. Even if one were to absent from some of the examples given above the requisite element of fault in dangerous driving so that the driver could not legally be guilty of driving at a speed dangerous, speed would nonetheless pose a danger.

The difficulty with relying upon a law prohibiting dangerous driving as a factor limiting speed in an event like the Cannonball Run is threefold:

(a) As the test for liability for the offence is objective and impersonal it is very much value - laden, and the decision to prosecute a charge for dangerous driving depends entirely upon the assessment by the observing police officer of the manner in which the vehicle was being driven or at the speed at which the vehicle was driven,

(b) The particular law is difficult to enforce as it virtually necessitates the presence of a police officer at the location of every possible offence. The impracticality of the ubiquitous police officer is obvious and,

(c) By the time the offence has been detected, danger, whether actual or potential, has

already been created. It may be said that in the case of speeding offences they have also been committed before detection. However, the material difference between speeding and dangerous driving is that speeding does not necessarily import an element of danger.

It must be concluded that the fact that there is a law prohibiting dangerous driving does not adequately contain the speeds at which vehicles might travel during an event like the Cannonball in such a way as to be consistent with public safety.

One argument which was put forward to support the non-containment of speed of vehicles participating in the Cannonball Run was that many drivers in the Northern Territory drive at speeds of up to 200 kph from time to time. However, Mr Chambers gave evidence that 85% of drivers in the Territory drive at speeds less than 130 kph. As Counsel assisting the Coroner put it:

"The risk to public safety of the occasional driver who drives at 200 kph cannot be compared to a field of over 100 cars in competition mode required to maintain high average speeds for 100 kilometres at a stretch."

Whilst it may be strictly true that speed in isolation is not dangerous, and its element of dangerousness is dependant upon all the surrounding circumstances, it is fair to say that as the speed of a vehicle increases the degree of danger created by the speed of that vehicle correspondingly increases. It does so because there is always the risk that something untoward will happen, and if something untoward occurs, there is the risk, due to the increased speed, that the element of danger, and hence the potential for damage, will be greater than in the case of a vehicle travelling at a lesser speed.

It is fundamental that any review and evaluation of the 1994 Cannonball Run include an intensive analysis and assessment of the issue of speed. For all of the reasons given above, it seems clear that in the event of a second Cannonball Run being considered there is a real need to inhibit the speed at which vehicles might travel during the course of the event. One way of approaching the matter is to impose an absolute speed limit. Of course, there are obvious logistical problems in an event like the Cannonball Run with the enforcement of a maximum speed limit. An alternative is to set a maximum average speed which, whilst it allows for vehicles to travel faster than the average speed, the margin for

excess is within the parameters of safety. The event should be structured in such a way as to ensure that the difference between average speeds and top speeds is minimal. One way of achieving this would be to close the roads during the running of the event.

The issue of speed, whether it be resolved by imposing an absolute limit or a maximum average speed, needs to be analysed and evaluated having regard to a number of different factors:

- (1) the nature and condition of the roads upon which it is intended to run the event,*
- (2) in the event roads are to remain open during the event, the amount and nature of the traffic actually using or reasonably expected to use the roads,*
- (3) whether the roads are to be closed during the event. If the roads are to be closed then the risk of competitors travelling at high speed colliding with public vehicles travelling either in the same direction or the opposite is removed. The closure of roads may allow competitors to travel at higher speeds than in the case where roads remain open to the public*
- (4) the nature and condition of the vehicles taking part in the event and,*
- (5) the driving experience and driving skills of participants.*

The speed at which vehicles are likely to travel during the course of an event like the Cannonball Run is a critical public safety issue. All of the above matters need to be factored into any determination as to what are safe speeds.

The Closure of Roads during the event.

Due to my finding that the presence of the Lexcen, a public vehicle, was a contributory factor in the accident, an independent review and an evaluation of the 1994 Cannonball Run should seriously question the desirability of having roads open to public use during the running of any second Cannonball Run.

The question of allowing the public to share the road with competitors is very complex,

and the evidence adduced at the inquest does not permit any conclusions to be drawn. The issue can only be satisfactorily resolved after weighing a number of considerations, some of which are conflicting. They are:

(1) The obvious inconvenience that would be caused to public use of the highway by commercial transport and individuals if roads were closed to the public during the running of the event,

(2) The likely danger of a substantial number of high performance vehicles travelling at high speed and co-mingling with public non-competition vehicles,

(3) The actual volume of traffic on Territory roads. It should be noted that the event, by adding a substantial number of vehicles to the road, automatically augments traffic density.

(4) The obvious interrelationship between speed and the closure or non-closure of roads. It is noted that Cams' final official position was that roads could remain open to the public during the event provided a maximum average speed of 140 kph was set. It can be inferred from the position taken by Cams that an element of speed may be consistent with public safety ie leaving the roads open during the event and

(5) The possibility that the special sections could be run over certain closed sections of Territory roads which because of their geographical location and light traffic use would constitute minimal interruption to public use of the roadway. Annexed to Mr Chambers' statement (Exhibit 20) was a document entitled "Some Ideas for improving the event. At page 11 of that document under the sub-heading "Event Structure" the following suggestion is made:

"If 'monopolising' the highway did become an issue, other options could be explored:

- A diversion or short side runs along the Carpentaria, Tablelands and Barkly Highway where traffic volumes are very low;*
- Using old sections of the Stuart Highway leg the 'scenic' route between*

Adelaide River and Hayes Creek would test driving skills for Cannonballers or provide an alternative route for normal traffic or both). They could be closed to normal traffic without causing a backlash. Reinstatement of old construction detours for normal traffic provides a further option for separating Cannonballers from the general public;

- *Alterations to the size and composition of the entries would speed the passage of the field through the stages. Oncoming traffic could be 'stored' at selected locations until the field passes. With careful planning and reliable radio communications, opposing traffic would only be delayed for the time it would take Police to marshal them until the field passes. Advance notification of where the field will be at any given time will allow Police to group the movement of opposing traffic."*

All five considerations referred to above would need to be considered and weighed in light of the wider issue of the degree of public support for the running of a second Cannonball Run. The degree of public support for the event may have some effect on whether or not roads should remain open to the public or closed during the event. For example, public support for the event may be so strong that the general public are prepared to suffer the inconvenience caused by the closure of sections of the roadway for the duration of stages or sections of the Run. On the other hand, public support, although substantial, may not be sufficient to countenance the closure of roads during the event. In such a case the degree of public support may support roads remaining open with all necessary adjustments being made in terms of speed and road safety to ensure optimal compliance with the requirements of public safety.

Assessment of Driving Experience and Driving Skills of Participants.

As previously noted the screening process used by the organisers for selecting suitable entrants in the Cannonball Run did not include driver testing as such.

The Court heard some evidence from Mr Keys as to the recent system adopted by the organisers of Targa Tasmania. That system seems to be orientated towards driver skill. Mr Keys stated:

"....(it is) a system which is superior but works in with the Cams licensing requirements and in fact it puts another step in the chain so that a driver is required to undergo some form of performance driver testing if there is no previous competitor history of that driver."

Mr Keys went on to described the system in the following terms:

"....it's a exercise which is designed to take the driver through the processes to his education of what to do in case of trouble....whilst it's an evaluation of the driver skills, it's also probably an evaluation of the driver skills after a certain amount of education has been taken and practical testing and practical exercises have been undertaken under instruction."

Apart from that very general description of driver testing for the Targa Tasmania, no evidence was adduced as to how the process worked in practice.

It is noted that Mr Moffat, himself, acknowledged the value of further screening of drivers in the future, and was generally in favour of the system of testing adopted by the organisers of Targa Tasmania.

Although it was Mr Moffat' opinion that, even if driver testing had been a requirement for entry to the Cannonball Run, Mr Kabe would have passed the test. However, it is not clear that Mr Kabe had adequate defensive driving skills. But even if he would have passed the test, that is no ground for not considering the introduction of driver testing (including defensive driving techniques) in future events. There were a great number of entrants in the Cannonball Run, who in terms of driver ability, and relative to Mr Kabe, were completely unknown quantities.

If another Cannonball Run is to be held those conducting the independent review and evaluation should closely examine the screening process adopted in the Targa Tasmania, and seriously consider putting in place a similar screening process which focuses on the assessment of driving skills, in particular the defensive driving aspect.

Given the very important role played by navigators in an event like the Cannonball Run, I

would also recommend that screening procedures for navigators be considered during the course of the evaluative exercise.

Flying Finishes Versus Stop Finishes

Given the presence of Mr Castaldi's Lexcen, I am satisfied on the balance of probabilities that had there been a flying finish at the Stuart Well checkpoint the particular accident which took the lives of the two Japanese competitors and the two marshals would not have occurred.

The basis for that conclusion lies in the practical difference between the use of stop finishes and flying finishes in events not relevantly dissimilar to the Cannonball Run. The type of finish used at the Stuart Well checkpoint falls within the general description of a stop finish ie competitors were required to slow down to a stop at which the completion of the competitive section is determined. The other method of timing competitors is called a flying finish in which competitors drive through a checkpoint (without stopping) at which the vehicle's arrival time is calculated, with the vehicle being required to slow down and stop beyond that point. The clear advantage of a flying finish is that such a method of timing competitors requires no deviation in the vehicle's direction nor the application of brakes. In contrast the stop finish at Stuart Well required Mr Kabe to enter the lay-by, and hence change the direction of his vehicle. It is fully conceded that the presence of Mr Castaldi's Lexcen was a contributory factor in the accident in that it clearly contributed to Mr Kabe's attempt to enter the lay-by at critical speed and in a critical manoeuvre. However, even given the presence of the Lexcen, the need for Mr Kabe to change direction, which proved to have fatal consequences, would have been avoided had a flying finish been used at the Stuart Well checkpoint. Not having to change direction, and without fear of overshooting the checkpoint, Mr Kabe would have either overtaken the Lexcen, and proceeded through the checkpoint without stopping, or remained behind the Lexcen and proceeded through the checkpoint in the same fashion. It is very difficult to imagine the particular accident occurring had a flying finish been used at the Stuart Well checkpoint.

Mr Nichol's evidence given at the inquest was of considerable assistance on the issue of flying finishes versus stop finishes. In his opinion the real benefit of a flying finish is that it avoids the danger that otherwise might occur where competitors who might be running

a few seconds late might be tempted to race up to the stop control point quickly, and brake at the last moment so as to gain an extra second or so. He gave evidence that almost all road events or rallies in Australia use a flying finish, even inside a township. Mr Nichol stated that the basic reason for this is safety. It is significant that Mr Nichol did not accept that in the case of the checkpoint at Stuart Well which had a lead up from a flat open road offering a view of the checkpoint anything up to a kilometre away, would render the need for a flying finish less pressing than in a rally in a rural setting. However, he seemed to concede that the safety issues may be rendered less crucial in an environment like that which prevailed at Stuart Well. Mr Nichol stated that he could not see any practical difficulties with placing a flying finish at the Stuart Well checkpoint. Although Mr Nichol did not feel able to say that if there were a flying finish at the checkpoint the accident would not have occurred, the Court is in a superior position to Mr Nichol, having heard all the evidence. The whole of the evidence supports a finding that the particular accident which occurred would have been prevented had a flying finish been in place at the relevant checkpoint.

However, the fact that this particular accident would not have occurred had there been a flying finish does not necessarily support a clear recommendation that in the event of another Cannonball Run being held flying finishes should be employed. The finding that a flying finish would have avoided the accident presupposes the presence of the Lexcen. If the Lexcen (which was a clear source of distraction) is absented from the equation, one can not reasonably reach the same comfortable state of persuasion and conclude that the particular accident would have still occurred with the stop finish, and been avoided with a flying finish. Therefore, the use of flying finishes as apposed to stop finishes in future events remains a live issue.

It would appear that the main reason given by the organisers for not employing a flying finish at the Stuart Well checkpoint was because the other special sections of the Run ended in areas that were subject to speed restrictions, with the result that stop finishes were adopted, and the organisers wished to maintain some consistency. However, no cogent reasons were advanced for not having flying finishes at the end of those other special sections. The checkpoints could have been quite easily located outside built up areas to facilitate a flying finish.

Other arguments which were advanced by the organisers to support the use of stop finishes as apposed to flying finishes included the following:

(1) Mr Nichol, Mr Keys and Mr Schenken, who all advocated the use of flying finishes did not have a detailed knowledge of road conditions in the Northern Territory and did not have sufficient knowledge to appreciate the difference between the 1994 Cannonball Run and the normal rallying arrangements with which they were familiar. This argument underlines the absolute need for any independent expert or body of experts, undertaking a review and evaluation of the 1994 Cannonball Run, to thoroughly familiarise itself with the relevant road conditions in the Northern Territory, before making a proper assessment of the most appropriate method of timing competitors at the end of a special section in an event like the Cannonball Run.

(2) It was argued that the number of persons likely to congregate around the checkpoints would be greater where flying finishes were employed. That might be so but that is simply a matter of spectator control which can be achieved by the increased presence of marshals, and possibly police.

(3) A further argument was that the number of persons required to man a checkpoint using a flying finish to time competitors would increase by 5 and possibly 6 because of the procedures involved. Again that is purely a resource problem which could presumably be easily resolved.

(4) It was claimed that the possibility of error was just as great with flying finishes. Counsel appearing on behalf of the organisers put the argument thus:

"If the actual officials measuring the flying finish were between 150 and 300 metres away as suggested in the evidence of Mr Nichol and from his official guide there is nothing to say that a person could pass through the flying finish and then not appreciate their correct position and make some braking manoeuvre such as brought Mr Kabe to grief. The flying finish still contemplates a stop after the control point but greatly encourages persons to try to race to the flying finish to get the maximum benefit from any time picked up. It should be emphasised that flying finishes are used in races (which is what rallies are) where competitors have to

achieve the maximum possible speeds, usually over closed roads and usually in competition with the clock. In this case the averages required and handed out by the organisers each morning were clearly within the capabilities of the categories of cars."

These safety concerns about stop finishes, which appear, in my opinion, to be somewhat exaggerated nonetheless need to be analysed and evaluated as against the merits of flying finishes.

(5) The claim that stop finishes as employed in the Cannonball Run encouraged competitors to race to the finish to make up lost time was said to be unfounded. It was submitted that the structure of the event militated against that happening. Competitors were required to maintain an average speed so as to bring themselves within a 3 minute window. It was said that given such a wide margin within which to achieve minimum loss of points a competitor did not have to race to the finish. It was further said that the direction to decrease speed to 120 kph, and then to 60 kph, near control points, it being expected competitors would comply with these directions, was a further safeguard against competitors racing to the finish. Racing in the shutdown zone in sight of marshals and control point officials under the Cannonball Run system would be to invite penalty. This was yet a further safeguard. However, this argument presupposes that things will happen in the way expected, that the 3 minute window will be sufficiently wide to preclude racing to the finish, and that competitors will notice the shutdown zone and decrease speed. The accident that occurred in the Cannonball Run indicates how unpredictable events such as the Cannonball run are. This element of unpredictability must loom large in the minds of those undertaking a review and evaluation of the 1994 Cannonball Run.

Any evaluation of the appropriate method of timing competitors in an event like the Cannonball Run must not overlook the fact that two marshals also lost their lives in the traffic accident. In hindsight the use of a chicane or similar system at the Stuart Well checkpoint might have reduced the risk of serious harm to the two marshals. Therefore, should stop finishes be considered the more appropriate method of finish in any future Cannonball Run, serious consideration should be given to the utilisation of a chicane or similar system at checkpoints governed by stop finishes.

Finally, the fact that the Cams' stewards attending the Cannonball Run did not raise any concerns about the use of stop finishes can not be a vindication of the wisdom of using stop finishes. It is clear on the evidence that there was a degree of confusion amongst the Cams' officials as to what type of finishes were to be used in the event. However, it is clear that the option preferred by Cams was a flying finish.

Helmets

It is clear from the evidence of Dr Lee, whose evidence I accept, that the lives of Mr Kabe and Mr Okano may have been saved had they been wearing safety helmets. Notwithstanding, I do not consider that I am in a position to recommend that safety helmets be worn by competitors in the event of a second Cannonball Run. The reason for this is there is a thought-provoking array of arguments opposed to the compulsory wearing of safety helmets in an event like the Cannonball Run.

Foremost amongst those arguments is the one advanced by Mr Moffat viz, that the wearing of safety helmets might cause some drivers to slip into "racing mode", and drive faster. That argument is not without substance. The argument becomes the more relevant given the conceptual underpinning of the Cannonball Run - it was an event, and not a race.

Other arguments against the compulsory wearing of helmets included the effect of helmets on driver comfort and fatigue, and the ease of communication between driver and navigator. These arguments can not be summarily dismissed, as driver fatigue and impaired communication between driver and navigator in an event like the Cannonball Run have a potential to cause accidents.

As to whether the wearing of safety helmets in future events should be made compulsory will depend upon a careful assessment and weighing of all the competing considerations.

Signage and Route Instructions

These form a very important part of the event's infrastructure. Any process of review and evaluation should address (a) the need for adequate signage, warning of shutdown zones and checkpoints (b) the need for route instructions which are both easy to read and informative.

Miscellaneous

A number of other aspects arising out of the 1994 Cannonball Run should also be addressed during any review process.

Although the loose aggregate on the lay-by was not found to be a contributory factor in the accident, loose aggregate can constitute a danger in some circumstances. Therefore, steps should be taken to remove beforehand loose-aggregate from all lay-bys in any future event.

Superintendent Ey made some recommendations as to how the event might be improved from the police perspective. They appear on page 107 of these findings. The Superintendents' recommendations should be considered.

Allan Moffat also made some suggestions. They appear on pages 156 and 157 of these findings. Likewise, they need to be considered.

GIVEN under my hand this Tuesday, 20th day of December 1994.



JOHN ALLAN LOWNDES