



# Police collision resulting in the death of Rawiri Wilson and serious injury to another youth

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. At about 11.37pm on 25 July 2009, a marked police car travelling on State Highway 1, just south of Ohaeawai in Northland, hit two pedestrians walking on the roadway in the same direction. The impact killed Rawiri Riro Wilson and seriously injured a second youth, both aged 16.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

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### Summary of events

3. On Saturday 25 July 2009, Rawiri Wilson, his 14 year old brother, and 16 year old cousin, spent the day repairing a driveway in Kaeo. At about 6pm the three boys left Kaeo with a relative in order to attend a family birthday party near Ohaeawai.
4. During the evening the youths consumed alcohol and smoked cannabis.
5. At about 10pm, after Rawiri's brother had been involved in a fight, he and his cousin decided to leave the birthday party and walk to Ohaeawai to visit friends. They went to the Ohaeawai rugby club where a function was taking place. The boys were not allowed into the function and so they decided to walk back to the birthday party, eastbound along State Highway 1.
6. En-route the two boys met Rawiri who was walking towards them. He joined them and the three then continued to walk towards the birthday party venue.
7. The youths walked three abreast on the left side of the road, in the same direction as vehicles travelling east. Rawiri's brother was initially walking on the gravel, their cousin

on the white fog line, with Rawiri walking inside the eastbound lane. The boys were all wearing primarily dark clothing.

8. In interview, Rawiri's cousin said that when the youths heard a vehicle approaching from behind: "*Rawiri would move in behind me and [Rawiri's brother] would stay on the gravel.*" Nevertheless, the drivers and passengers of three separate vehicles stated that they had seen the boys walking in the middle of the eastbound lane. The occupants of two of the vehicles, both travelling east, reported seeing a person lurch into the eastbound lane waving their arms about. Both drivers had to take evasive action to avoid hitting this person.
9. Just before the collision occurred, Rawiri's brother had moved to be about 20 metres ahead of Rawiri and his cousin. The cousin later told police that at the time of impact he had been walking on the white line with Rawiri beside him walking within the eastbound lane.
10. During the evening of 25 July 2009, Officers A and B were on duty. At about 9pm, in the course of their duty, they and several other officers attended the Ohaeawai Rugby Club where a popular band was playing and a large crowd had gathered. The officers were monitoring liquor consumption and crowd behaviour. None of the attending officers consumed alcohol.
11. At about 11.30pm, Officer B was due to finish his shift. Officer A was told by his supervisor to take Officer B home. At about 11.35pm Officers A and B left the rugby club, in a marked police vehicle with Officer A driving. At the time of this incident, Officer A had two and a half years service with the New Zealand Police and was certified as a gold licence holder under the Police Professional Driver Programme.
12. Police have calculated that it would have taken Officers A and B approximately 1 minute and 20 seconds to drive from the rugby club to the collision site, given the 60kph, then the 100kph speed limits governing the route.
13. Officer A descended a hill known locally as "Ludbrook's Hill", which slopes down and to the left on a reasonably steep gradient. Towards the bottom of the hill the road makes an easy turn to the right, immediately followed by a dip in the road before it rises and flattens to a straight section of the highway.
14. At approximately 11.37pm the police car driven by Officer A collided with Rawiri and his cousin just after the dipped part of the road. The police communications record indicates the time Officer B called in the crash as 11.37:14pm. Officer B estimated that he called it in no more than 10 seconds after it had occurred.
15. Rawiri's cousin was struck a glancing blow by the side and mirror of the police car, propelling him into the ditch at the side of the road. Rawiri was struck by the front of the

car, adjacent to the left headlamp. The debris from the impact indicated that he was 1.3 to 1.5 metres into the roadway from the white fog line when struck. The nature of his injuries suggests that Rawiri had turned to face the police car when he was struck.

16. Rawiri died at the scene. His cousin suffered serious injuries requiring hospitalisation and orthopaedic treatment.

#### *Officer A's mobile phone use*

17. At 11.35:21pm and 11.35:48pm Officer A sent text messages to two friends from his personal mobile phone. Officer A gave evidence before Coroner Evans at the Coronial Hearing<sup>1</sup> that he could not recall sending these text messages as he was driving out of Ohaeawai. Officer B gave evidence that he saw Officer A's phone in his hands as they sat in the parked police car outside the rugby club and when the vehicle was travelling at 30kph to the intersection of State Highways 12 and 1, a distance of approximately 100 meters. Officer B said the phone was no longer in Officer A's hands by the time they reached the intersection of State Highways 12 and 1; and that Officer A was not using his phone after that.
18. The Authority notes that, after hearing all the evidence, the Coroner accepted the evidence given by Officer B, and found that Officer A was texting as he was driving as he left Ohaeawai Rugby Club.
19. Twenty to thirty seconds before the collision, at 11.36:41pm, Officer A received a text message. In statements to police, Officer A denied reading this message or looking at his mobile phone at the time the message was received. Officer B said that he could not recall Officer A looking at his phone just before the collision, nor did he recall hearing a message alert. However, after the collision, Officer B asked Officer A: "*You weren't texting, were you?*" At the Coronial hearing, Officer B was asked why he had asked that question and replied that he wanted to make it clear in his mind that: "*[Officer A] had not been texting*", adding "*...because he had [used] his phone back in town.*"
20. Coroner Evans found that: "*The evidence does not enable the Court to know whether [Officer A] opened that final text message.*" The Authority agrees that this question cannot be determined unequivocally.

#### *Events following the collision*

21. Approximately two hours after the crash, a sergeant, who had been called on duty because of the incident, gave Officer A an alcohol breath screening test. The result was "*clear*".

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<sup>1</sup> Inquest into the death of Rawiri Wilson, in the Coroners Court, held at Whangarei before Coroner Evans, 14 – 17 February 2011.

### Rawiri Wilson

22. Rawiri was wearing dark coloured clothing at the time of the collision.
23. An analysis of blood taken from Rawiri found that he had 138 milligrams of alcohol per 100 millilitres of blood. As an indication of Rawiri's level of intoxication, the legal blood alcohol limit for a driver under 20 years of age is 30 milligrams of alcohol per 100 millilitres of blood.
24. The analysis also found that he had tetrahydrocannabinol (THC) level of 1 microgram per litre of blood, consistent with him having smoked the equivalent of a cannabis cigarette within 0.5 hours to 7 hours prior to his death. This is consistent with the statement of Rawiri's cousin that he and Rawiri had "*smoked a couple of cones*" at about 5.30pm that evening. Rawiri's brother also said that he saw Rawiri smoke cannabis at the birthday party.

### Rawiri's cousin

25. No blood or urine samples were taken from the cousin for analysis. However, in police interviews following the crash, he said that he smoked cannabis with Rawiri at about 5.30pm and that whilst at the party he had drunk about six stubbies of beer.
26. The cousin said that he was bare-chested, having taken off his three tops while walking along the road. He was carrying these tops over his shoulder, two were white and one was black. He was wearing long black pants, a blue cap and black and white shoes.
27. In his first statement to police, the cousin said that prior to the police car hitting Rawiri, Rawiri had stepped in behind him and that they were both walking on the white fog line. However, in his second statement to police, the cousin said: "*At the time of impact we were walking side by sides. We were not holding each other we were just cruising.*" In evidence at the Coronial hearing, the cousin confirmed that just prior to the collision Rawiri was walking alongside him, inside the eastbound lane.
28. In relation to the boys' behaviour on the road, the cousin said: "*We were just cruising we weren't running on the road or anything like that. We were laughing and yelling a bit.*" He said further, that while not fighting each other, they were "*building each other up*" for an impending fight back at the party, and were punching the air and practising other fighting moves.

### Witnesses

#### Rawiri's brother

29. In an interview with the Authority's investigator, Rawiri's brother said that at the time of impact he was ahead of the other two boys, and that they were all walking along the

white fog line at the side of the road. He said that when the accident happened: *“I was just about at the driveway I was a way in front of Rawiri and [his cousin]. I could hear a car coming down the hill alright it sounded like it was going fast. It was going hard out I think. I can’t remember it skidding or breaking I just heard a bash. The car stopped then. That is when I saw it was a police car.”*

30. In relation to the police car lights, he said that he thought they were *“on dip because they weren’t that bright”*.

#### *Drivers of other vehicles*

31. Witness accounts from 12 other road users who saw either two or three of the boys over the 45 minutes prior to the collision state that the boys were acting in an unpredictable manner, that they *“lunged out”* into the roadway as though trying to hitchhike, were walking on the centerline and inside road lanes, veering into the lanes of the road as traffic was passing, fighting with one another or *“play-fighting”* and *“horsing around”*.
32. Four of these witnesses saw Rawiri and his cousin minutes before the collision occurred. One, who was travelling in the opposite direction to the boys and who would have seen them seconds before the collision, describes one of the boys *“waving his arms around”* and said he *“looked like he was drunk”*. He commented further that: *“If we had been coming the other way I think we would have hit them.”* Another witness, travelling in the same direction as the boys, who saw them a few minutes before the collision, said: *“The two guys were walking side by side.”* He said that as he approached them *“...one of them sort of lurched out onto the road and stuck his arm out towards the van. It looked like he was trying to thumb us down to get a ride. I had to veer into the middle of the road to make sure that I missed him.”*

#### **Location and road conditions**

33. The crash occurred on State Highway 1, approximately 1.3 kilometres from the intersection with state highway 12 at Ohaeawai. The speed limit at the scene is 100kph. The road is constructed with chip seal and has a marked centre line and painted white fog lines at the outer edges. Beyond the fog lines are narrow shoulders before the surface falls away to roadside drains and water tables. There is no street lighting.
34. On 25 July 2009, there was little or no moonlight. It was a clear but dark night.

#### **Police crash analysis**

35. The police crash investigator reported that Rawiri was propelled forward from the point of impact a distance of 38.8 metres. The investigator said this is an indication that the driver was braking at the time.

36. The police crash investigator considered the environment, the vehicles and the people involved for factors which could have caused or contributed to the crash. His analysis of the crash found:
- *“The vehicle involved was travelling at between 67 and 80 kph.*
  - *The deceased was walking on the road in the traffic lanes, 1.5 metres in from the fog line [lane width has been measured at 3.5 metres].*
  - *The available distance to allow observation for a vehicle in low beam was approximately 38 metres.*
  - *If travelling at 67 – 80 kph a vehicle will travel between 46.5 and 55.5 metres during the drivers perception reaction phase.*
  - *At these speeds, the vehicle would have struck the pedestrian before the driver could react to their presence.”*
37. In relation to the environment, the crash investigator noted that there was no street lighting or footpaths; that there was a narrow road shoulder and a drop off into a drain; and that the dark background in the crash area gave less contrast and depth of field.
38. In relation to the police car, the crash investigator stated: *“Headlights on low beam in an unlit open road speed limit area is not illegal but is unwise.”*
39. In relation to the actions of the boys, the crash investigator noted that the boys were wearing dark clothing; that they were walking with the traffic coming from behind; that they were walking within the traffic lanes; that they were skylarking on the roadway; and that they were under the influence of alcohol and drugs.

### **Cause of death**

40. The pathologist found that the cause of death of Rawiri Wilson was multiple injuries which were consistent with the result of being struck by a motor vehicle. She commented that death had most likely arisen from the combined effects of blood loss, head injury and respiratory distress due to pulmonary contusions.

### **Coronial Hearing**

41. A Coronial hearing took place on 14 – 17 February 2011, in the Coroners Court held at Whangarei. Coroner Evans released the following findings on 6 May 2011.

#### *Officer A's driving*

42. *“[Officer A's] act of driving with headlights dipped in the dark conditions prevailing on the road at the time in question was inconsistent with that reasonably to be expected of a*



*reasonable and prudent driver.*” Coroner Evans also found that had Officer A altered the headlights from dipped to high beam as he entered the state highway *“this fatal accident might have been avoided.”*

#### *Actions of the boys*

43. Coroner Evans said that the above finding was subject to the following caveat. *“The evidence shows that Rawiri and [his cousin] were constantly moving about on the roadway.”* Coroner Evans referred to the fact that the boys were under the influence of alcohol, had smoked cannabis and were limbering up for a fight and engaged in shadow boxing. He said: *“The Court cannot safely exclude the possibility that Rawiri might have been leaping around behind [his cousin] and that, immediately before he was struck, he might suddenly have changed his position on the roadway in such a way as to place himself in front of the Police car.”*

#### *Timing*

44. Coroner Evans found that Officer A: *“...had no time available to him to avoid the accident other than, in the agony of the moment, reacting instinctively by swerving to the right. His sighting of the two young men on the roadway and the impact between them and his vehicle occurred within the same time interval.”*

#### *Police car*

45. Coroner Evans accepted the evidence of the police crash investigator regarding the pre-impact speed of the police car (between 67 and 80kph) and regarding the available distance to allow observation for a vehicle travelling on low beam (38 metres) and on high beam (153 metres). See paragraph 36 for further detail.)

#### *Recommendation*

46. Coroner Evans made a recommendation to the New Zealand Transport Agency asking that consideration be given to whether the Land Transport (Road User) Rule should contain requirements in relation to safe walking by pedestrians on State Highways and as to when and in what circumstances drivers must drive with a vehicles headlamps on full beam.

#### **Police internal investigation**

47. Police carried out an investigation into the crash. An internal legal opinion recommended that there be no prosecution of Officer A for causing the death of Rawiri Wilson or injury to his cousin, and that Officer A not be prosecuted for careless driving simpliciter (see paragraph 50).
48. On 22 December 2009 the Authority recommended that the Commissioner of Police seek a second opinion on possible criminal liability from an external source, and that this be

obtained sufficiently in advance of 25 January 2010, when the time limit for prosecution would be reached, to enable a careful and considered decision to be made on whether or not to prosecute Officer A.

49. Police then sought an independent opinion from the Auckland Crown Solicitor on Officer A's liability. The Crown Solicitor confirmed the advice in the internal legal opinion that Officer A not be prosecuted for either careless driving (simpliciter) or careless driving causing the death of Rawiri Wilson or the injuring of his cousin. Following this advice the Northland District Commander made the decision not to charge Officer A.

#### LAWS AND POLICIES

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50. Section 8 of the Land Transport Act 1998 covers the offence of careless driving simpliciter and states: *"A person may not drive a vehicle, or cause a vehicle to be driven, carelessly or without reasonable consideration for other persons."*
51. Section 38(1) of the Land Transport Act covers the offence of careless driving causing death or injury, and states: *"A person commits an offence if the person operates a vehicle on a road carelessly or without reasonable consideration for other persons using the road, and by that act or omission causes an injury to or the death of another person."*
52. Section 68(1)(c)(i) of the Land Transport Act gives police the power to require the driver of a vehicle involved in an accident to undergo a breath screening test *"without delay"*.



## THE AUTHORITY'S FINDINGS

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### Officer A's mobile phone use

53. Officer A admitted sending text messages while driving on police business "*whenever I feel like it.*"
54. The Authority agrees with the finding of Coroner Evans that Officer A was texting as he drove out of Ohaeawai (see paragraphs 17 and 18).
55. In July 2009 it was not against the law to use a mobile phone while driving. At the time, the use of mobile phones while driving was being widely debated and was actively discouraged by various government agencies, including Police.
56. Officer A received a text message on his mobile phone 20 to 30 seconds before the crash. Officer A says that he did not open his phone or read the text message and the Authority accepts that the available evidence does not establish that Officer A was using his mobile phone immediately prior to impact (see paragraph 20). The Authority is of the view however, that Officer A would have been aware of the incoming message.

#### FINDINGS

Officer A had been using his personal mobile phone while driving on duty. However, it was not unlawful for him to do so.

It has not been established that Officer A was using his mobile phone at the time of the collision or in the seconds before it.

### Manner of driving of Officer A

57. Officer A was driving with the police car's headlights on low beam. There was no road lighting and little or no moonlight.
58. The police crash investigation indicated that Officer A, driving with the patrol car's lights on low beam, could have seen the boys when he was 22 metres away from them. If travelling at 80kph, Officer A would have covered the 22 metres in approximately one second.
59. The evidence indicates that Officer A was braking the police vehicle when it struck Rawiri.

#### FINDINGS

Officer A should have been driving with his lights on high beam. However, it was not unlawful for Officer A to drive with his lights on low beam.

With the headlights on low beam Officer A had no chance of avoiding a collision with the boys once they came into view.

### Police actions post collision

60. There is no suggestion that that Officer A had consumed any alcohol.
61. Section 68(1)(c)(i) of the Land Transport Act gives police the power to require the driver of a vehicle involved in an accident to undergo a breath screening test “without delay”. The Police Manual chapter on *Traffic crashes* states that, following a fatal crash: “All drivers must be breath tested”.
62. Officer A should have been breath tested “without delay” at the scene of the collision; however, due to the relative remoteness of this incident, all available police resources were focused on dealing with the victims and crash scene. For this reason, Officer A was not breath tested until two hours after the crash (see paragraph 21).
63. The Authority accepts that the traumatic circumstances caused breath testing to be overlooked initially.
64. The Authority is aware that this issue was later addressed in a debrief of the incident with the officers concerned.

### CONCLUSIONS

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65. The actions of Officer A, in using his mobile phone while driving, and driving with his headlights on low beam, were not contrary to law. They were however not the actions of a reasonable and prudent driver.
66. Therefore, in terms of section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), the Authority has formed the opinion that, in doing so, the actions of Officer A were unreasonable and undesirable.
67. Rawiri and his companions were under the influence of alcohol and cannabis, were not mindful of the risk to which they were exposed, and were not exercising caution as they walked on an unlit portion of State Highway 1.

RECOMMENDATION

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68. The Authority makes no recommendations pursuant to section 27(2) of the Act.

A handwritten signature in black ink, appearing to read 'L.P. Goddard', is centered on the page.

HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

JULY 2011

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is chaired by a High Court Judge and has other members.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority has highly experienced investigators who have worked in a range of law enforcement roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by police, or complaints about police practices, policies and procedures affecting the complainant;
- investigates, where there are reasonable grounds in the public interest, incidents in which police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must determine whether any police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



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