



# Fatal Police pursuit of Api Kao Aue

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. At 11:17pm on 4 December 2010 Api Kao Aue lost control of a Subaru Impreza he was driving while fleeing from police during a short pursuit in Mangere, Auckland. Mr Kao Aue died at the scene and his two passengers were seriously injured.
2. The Police notified the Independent Police Conduct Authority of the pursuit, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

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### Summary of events

3. At about 11.15pm on Saturday 4 December 2010, Api Kao Aue, aged 33, was driving a Subaru Impreza southbound on Coronation Road, Mangere, Auckland. With him in the car were two male passengers.
4. At the same time, Officers A and B were on patrol on Coronation Road in an unmarked category B police car. A category B car is authorised to initiate a pursuit but must be replaced by a marked category A police car as soon as possible.
5. Officer A was the driver. He is certified as a gold licence holder having been trained under the Police Professional Driver Programme (PDPP) and is therefore competent to engage in pursuits as the lead driver. His passenger, Officer B, was responsible for operating the radio and communicating with Police Northern Communications Centre (NorthComms).
6. As both vehicles approached the Coronation Road roundabout, the officers saw the Subaru. Officer A said: *"I noticed a flash of a dark coloured vehicle travelling quickly in a southerly direction around the far side of the roundabout and down Coronation Road towards Walmsley Road"*.

7. The speed limit on Coronation Road at this point is 50kph. Because Officer A believed the Subaru was speeding, he sought to confirm the speed and followed it through the roundabout. He did not exceed the speed limit in doing so. As Officer A exited the roundabout, he estimated that the Subaru was about 300 metres ahead.
8. About 250 metres after the roundabout, Coronation Road becomes McKenzie Road and the speed limit increases to 60kph. On McKenzie Road, the Subaru remained about 300 metres ahead of the police car. It was visible to both officers, but it was too far away for them to obtain the license plate details, see the driver, ascertain the number of passengers, or identify the make and model of the car.
9. As Mr Kao Aue approached the intersection with Tarata Crescent, he suddenly accelerated and pulled out onto the opposite side of the road to overtake a vehicle in front of him. At the time the officers were approximately 200 metres behind. The officers saw that Mr Kao Aue did not use his indicators when he pulled out, and noticed that the manoeuvre took place on a hill with poor visibility of oncoming traffic.
10. Both officers estimate that Mr Kao Aue had sped up to about 100kph. They saw him drive past a traffic island on the wrong side of the road and remain in the wrong lane until he arrived at the top of a rise in the road where he returned to his correct lane.
11. Due to this *“dangerous driving”* Officer A made the decision to stop the driver of the Subaru to: *“[e]stablish their state of mind, sobriety, license status and the condition of the vehicle”*.
12. Officer A activated the police car’s warning lights and siren to signal to the driver that he was required to stop. At this stage, the officers were approaching the Mangere Lawn Cemetery and were still several hundred metres behind the Subaru.
13. Officers A and B both said they considered the risks involved in commencing a pursuit of the driver of the Subaru, including:
  - the road was a wide, straight dual carriage way with a flush median;
  - apart from the one car overtaken by Mr Kao Aue there were no other cars on the road;
  - no pedestrians or other hazards were visible;
  - the weather was dry and fine;
  - visibility was excellent due to overhead lighting every 50-60 metres;
  - The Mangere Lawn Cemetery stretches along the right-hand side of the road with houses on the left;

- the up-coming intersections could be seen well in advance;
  - the driver appeared to be in control of his vehicle, driving in his own lane but with excessive speed; and
  - Officer A was an experienced, gold class driver.
14. After assessing the risks, Officer A concluded: *"...it was safe to pursue it in an effort to stop it or at least get into a position where I could obtain a vehicle description or registration number."*
15. In a Police interview, Officer A said he drove past the Mangere Lawn Cemetery at about 100kph. Despite having activated the patrol car's warning devices, both officers said that given the distance between the two cars and because the police car was unmarked and dark in colour, they did not immediately think that the driver of the Subaru was making an active attempt to evade them and probably didn't know that police were trying to stop him. Officer A said: *"Because of this we did not initially notify North Comms and other Police units of the situation."*
16. The Authority is of the opinion that from the time the red and blue lights and siren were activated until Officer B notified NorthComms of the pursuit, the officers were undertaking urgent duty driving, by seeking to apprehend a driver for a traffic offence in accordance with Police policy (see paragraph 56).
17. As Officer A pursued the Subaru along McKenzie Road, past Mangere Lawn Cemetery, he formed the view that they were not gaining any ground on the Subaru, and would not be able to get close enough to the vehicle to obtain registration details, so he asked Officer B to contact NorthComms. Officer B radioed NorthComms to advise that he had a *"priority"*. At about 11:17 pm, at the intersection of McKenzie Road and Kirkbride Road, Officer B advised the dispatcher they were in pursuit of a vehicle which had failed to stop. He gave his location (Kirkbride Road) and his direction (towards the Airport).
18. The officers noted that Mr Kao Aue had negotiated the slight left-hand bend into Kirkbride Road without difficulty and had stayed in his lane. Both cars were travelling in excess of 100 kph in the 60kph speed zone (for detail on the Kirkbride Road environment see paragraphs 28 - 33).
19. Officer A stated in a Police interview that he was aware that after the intersection with Ascot Road the Subaru would be approaching the major intersection with George Bolt Drive as well as a busier area of Mangere. He said that if the driver of the Subaru: *"... continued to drive in this manner beyond this intersection [with Ascot Road] I would have to consider abandoning the pursuit, even if I had not been able to get close enough to obtain a registration or description by that time."*

20. Police fleeing driver policy requires that once a pursuit has been commenced, the communications dispatcher must give the warning, *"...if there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge."* The NorthComms dispatcher gave this warning to Officer B and he immediately responded: *"Yeah acknowledged Comms, current speed 150, traffic medium, he's just spun out and he's crashed crashed crashed, vehicles gone down, we'll need ambos"*.
21. Mr Kao Aue had lost control of the Subaru negotiating the bend after the intersection with Ascot Road. The car collided with a steel sign post located on top of a grassy verge outside a hotel and restaurant. The impact was to the driver's side of Mr Kao Aue's car.
22. Mr Kao Aue died as a consequence of the injuries he sustained; his two passengers were seriously injured.
23. In Police interview Officers A and B both commented on their maximum speed (150kph in a 60kph zone):
  - 23.1 Officer A stated that he *"...felt at the time that this speed was still safe [to] maintain in the circumstances although I was aware that after rounding the corner at the intersection of Ascot Avenue the dark coloured vehicle would approach George Bolt Drive and enter a busier area of Mangere."*
  - 23.2 Officer B said: *"I remember thinking when I informed Comms of our speed, it was a bit quick."*
24. The total distance from where the Officers first saw Mr Kao Aue to the crash site was 2.47 kilometres. The actual pursuit covered 840 metres from the time Officer B contacted NorthComms until Mr Kao Aue collided with the sign post on Kirkbride Road. The 840 metre pursuit was conducted at speeds of over 100kph in a 60kph speed zone; the reported speed of 150kph was reached for a relatively short time prior to the crash. The radio transmission lasted approximately 33 seconds.

### **Passengers in the Subaru**

25. Mr Kao Aue had two passengers with him in the Subaru, only one of whom was able to be spoken to.
26. The passenger said that all the vehicles' occupants had been drinking heavily before getting into the car. He said Mr Kao Aue was driving fast, overtaking cars and driving on the wrong side of the road. He had made numerous requests to Mr Kao Aue to slow down but Mr Kao Aue had responded by turning up the music in the car. The passenger was unaware that Police were following the Subaru and said that no one in the car had mentioned the presence of Police.

## Witnesses

27. Numerous witnesses saw the pursuit on Kirkbride Road. These witnesses consistently estimated the speed of the Subaru to be between 100-140kph, and many said that it was travelling on the wrong side of the road. The witnesses said they saw a police car following behind, on the correct side of the road, with lights and siren activated.

## Environment

28. At the time of the pursuit the weather was fine and the road surface was dry. The pursuit took place at night; however, visibility was good, with street lighting along both sides of the road at regular intervals.
29. The route spanned three roads: Coronation Road, McKenzie Road and Kirkbride Road. While technically it is accurate to describe them as three separate roads they are in effect one and the same, as each flows into the next. The roads are all dual carriageways with a single lane of traffic in each direction.
30. The speed limit on Coronation Road is 50kph. It changes to 60kph on McKenzie Road, and remains at 60kph on Kirkbride Road.
31. The route itself is largely straight; there are two gentle left-hand bends in the road, one at the transition from McKenzie Road to Kirkbride Road and the other near the intersection of Kirkbride Road and Ascot Road.
32. The area of the pursuit is primarily residential. On McKenzie Road, at the point where Officer A activated his lights and siren, the Mangere Lawn Cemetery is on the right-hand side of the road. Once McKenzie Road becomes Kirkbride Road, the right-hand side of the road becomes farmland. The farmland finishes shortly before Kirkbride Road intersects with Ascot Road. Kirkbride Road is similar to McKenzie Road but has a greater number of commercial premises along its route.
33. Officer A stated that there was no traffic on the roads. However, during the pursuit Officer B reported to NorthComms that the traffic density was “medium”. This is supported by the evidence of the passenger in the Subaru. After considering all the evidence, including statements from 16 residents and other road users, the Authority finds that the traffic density during urgent duty driving and the pursuit was medium. The evidence also established the presence of pedestrian traffic, as well as people getting in and out of parked cars, at the time.

### **Toxicology**

34. A sample of Mr Kao Aue 's blood was taken and tested for the presence of alcohol and drugs. The blood results were 191 milligrams of alcohol per 100 millilitres of blood. The legal blood alcohol level for a driver over 20 years is 80 milligrams of alcohol per 100 millilitres of blood. His blood tested negative for recent drug use.
35. Officers A and B were breath tested at the crash scene and both returned a negative result.

### **Police crash analysis**

36. The police crash investigator determined there were two primary contributors to Mr Kao Aue losing control of the vehicle. The first was speed; Mr Kao Aue's Subaru was travelling between 126-137kph when attempting to negotiate a bend in the road. The second was his blood alcohol level, which was more than twice the legal limit.
37. There were no technical faults identified on the Subaru that would have contributed to Mr Kao Aue losing control of the vehicle, nor were there any environmental factors.

### **Mr Kao Aue 's driving history**

38. At the time of the pursuit, Mr Kao Aue was a suspended driver and had a history of driving offences and traffic infringements.

### **Cause of death**

39. The post mortem examination of Mr Kao Aue found that his injuries were consistent with a high speed impact and were the primary cause of death.
40. The forensic pathologist also noted that Mr Kao Aue suffered from an underlying and significant heart disease, which may have also contributed to his death.

## LAWS AND POLICIES

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### Legislative authority for pursuits

41. Under the Land Transport Act 1998, the Police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, the Police are empowered to stop vehicles in order to conduct a statutory search or when there are reasonable grounds to believe that an occupant of the vehicle is unlawfully at large or has committed an offence punishable by imprisonment. Where such a vehicle fails to stop, the Police may begin a pursuit.

### Fleeing driver policy

#### *New policy*

42. On 18 October 2010, Police replaced the pursuit policy with the fleeing driver policy. The policy addresses *“the conduct and management of how Police pursue fleeing drivers”*.

#### *Definition*

43. Under the policy, a fleeing driver incident occurs when (i) the driver of a vehicle has been signalled by police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) police take action to apprehend the driver. The police tactic to apprehend is referred to as a pursuit.

#### *Overriding principle*

44. Under the Police fleeing driver policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

#### *Risk assessment*

45. Under the Police fleeing driver policy, the pursuing officer[s] must carry out a risk assessment **both prior to initiation and during a pursuit** (emphasis added). The policy states that *“...assessing the risks must be a continuous process until the pursuit is resolved or abandoned.”* The officers involved in the pursuit must provide situation reports to the pursuit controller in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit including whether to direct the abandonment of the pursuit.
46. The assessment must be based on the following: consideration of the speed limit and manner of driving by the offending vehicle; identity and other characteristics of the

occupants of the offending vehicle; weather conditions; the environment, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the police driver and vehicle. The pursuing officers and the pursuit controller must then use the risk assessment factors to *“...determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

47. The policy instructs that if there is no need to immediately apprehend the fleeing driver, or the risks are too great, a pursuit must **not** be initiated, or should be abandoned (emphasis in Police policy).

#### *Communication requirements*

48. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 20, which the pursuing officer[s] must acknowledge. The pursuing officer[s] must provide information about their location and direction of travel. The communications centre must prompt for information about the reason for the pursuit, vehicle description, driving speed and posted speed limit, road and traffic conditions, weather, the offender’s manner of driving and identity, and the police driver and vehicle classifications as well as confirmation that warning devices are activated on the police car.

#### *Abandonment*

49. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The police driver, passenger (if senior in rank or service) and the pursuit controller are all authorised to abandon pursuit. The pursuit controller must then give the direct order: *“All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now.”*



50. The policy states that: *“A pursuit must be abandoned when any of the following criteria apply:*

- *an offender’s identity becomes known and apprehension can be effected later, so long as there is no immediate threat to public or staff safety or the fleeing vehicle’s locations is no longer known*
- *the distance between the primary unit and the offending vehicle is such, that in order for the Police vehicle to catch up to it, the speed involved creates an additional risk, and Police no longer has the ability to warn road users of the fleeing vehicle*
- *if a person is injured during the pursuit and there is no other unit available to render assistance*
- *there is a sustained loss of contact between the primary and / or secondary units with Comms, or the units fail to provide critical information to Comms in a timely manner*
- *when the siren and / or warning lights fail to operate*
- *any risk assessment criteria conditions change, such as an increase in traffic volumes or weather or road conditions, that mean the risks of continuing with the pursuit outweighs the need for immediate apprehension of the fleeing driver.”*

51. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

<b>Step</b>	<b>Action</b>
1	<i>Acknowledge the direction to abandon pursuit, or advise the pursuit controller that the pursuit has been abandoned.</i>
2	<i>Immediately reduce speed to increase the distance between the fleeing vehicle and their own</i>
3	<i>Deactivate warning devices once below the speed limit</i>
4	<i>Stop as soon as it is safe to do so</i>
5	<i>Report abandonment to the pursuit controller, confirming that they are stationary and giving their position.</i>
6	<i>Undertake a search phase if authorised by the pursuit controller.</i>

### *Roles and responsibilities*

52. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public

and police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with the communications centre, comply with all directions from the pursuit controller (i.e the shift commander at the Police communications centre), and comply with all directions from a police passenger if the passenger is senior in rank or service.

53. The passenger in a pursuing vehicle must assist the driver by operating the radio and advising of possible hazards. If senior in rank or service, the passenger may also direct the driver to abandon the pursuit.
54. The dispatcher at the Police communications centre must advise the shift commander (pursuit controller) that a pursuit has commenced, maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 20 and communicate instructions from the pursuit controller.
55. The pursuit controller (i.e. the shift commander at the communications centre) is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics. When a shift commander is unavailable, a communications centre team leader may take over as pursuit controller.

### **Urgent duty driving**

#### *Definition*

56. Urgent duty driving is defined as occurring when:

*“...an officer on duty is **either***

- *responding to a critical incident*
- *apprehending an offender for a traffic or criminal offence*
- *engaged in a pursuit; or*
- *engaged in activities approved by the commissioner in writing*

***and** to comply with traffic rules and regulations would prevent the execution of that duty [emphasis in original].”*

#### *Warning Devices*

57. The policy states that Police must use flashing lights and sirens at all time (continuously) unless a “*silent approach*” is tactically appropriate and can be used safely.

## THE AUTHORITY'S FINDINGS

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### Commencement of pursuit

58. Officers A and B and their unmarked category B patrol car were appropriately classified to undertake pursuits. Officer A was a gold rated driver.
59. Mr Kao Aue was signalled to stop under section 114(2) of the Land Transport Act 1998.
60. For a few hundred metres prior to Officer B notifying NorthComms of the pursuit, the officers were engaged in urgent duty driving in an effort to stop Mr Kao Aue . The officers had activated their lights and siren, in compliance with policy (see paragraphs 12, 15, 56 and 57).
61. Under the fleeing driver policy, once a driver fails to stop and attempts to evade apprehension, officers are authorised to commence a pursuit. However, in this case, it is not known whether or not Mr Kao Aue was aware police were trying to stop him, and therefore not known whether he was actively trying to evade apprehension (see paragraphs 15 and 26).
62. Nonetheless, from the perspective of Officers A and B the driver had failed to stop (see paragraph 16), was driving well in excess of the speed limit, and the officers had decided to take action to try to apprehend the driver. Accordingly, the officers acted appropriately, in calling the pursuit in to NorthComms, and in complying with the requirements of the fleeing driver policy.
63. Before commencing and calling in the pursuit, Officers A and B assessed the risk factors involved in pursuing (see paragraphs 13 and 14) and concluded that the immediate need to apprehend the offender outweighed the risks.

#### FINDING

Officers A and B complied with law and the fleeing driver policy in commencing the pursuit.

### Communication

64. Once Officer A saw that they were not gaining ground on Mr Kao Aue, he instructed Officer B to contact NorthComms. Officer B advised the dispatcher of a driver: *“Failing to stop, Kirkbride Road, towards the airport.”* (see paragraph 16).
65. The dispatcher gave Officer B the safety warning required under the fleeing driver policy and Officer B acknowledged the warning (see paragraph 20).

66. Officer B then provided the dispatcher with speed (150kph) and traffic volume (medium). Immediately after this report, the officers saw the driver of the Subaru lose control and crash. Officer B reported the crash to the dispatcher and requested that ambulances attend (see paragraph 20).
67. The radio transmission lasted for a total of 33 seconds; in that time Officer B responded to all the dispatcher's questions and provided information on location, direction, speed and traffic volume.

**FINDING**

Police complied with the policy in respect of communications provided.

**Speed and manner of driving**

68. The fleeing driver policy requires officers to drive in a manner that prioritises the safety of the public and staff. In accordance with this policy, the officers kept the patrol car's warning lights and siren activated at all times during the pursuit.
69. While pursuing Mr Kao Aue, for a short time, Officer A reached speeds of 150kph, in a 60kph speed zone (see paragraph 20). Mr Kao Aue crashed a few seconds after this speed was reported.
70. Whilst it is clear that Officer A was cognisant of upcoming risk factors and was considering abandonment if the pursuit continued in a similar fashion for much longer (see paragraphs 19 and 23.1); the Authority nevertheless finds that the speed reached by police was unjustified for the following reasons:
- the speed was two and a half times the legally prescribed limit for that stretch of road;
  - the pursuit route was through a semi-residential area and was heading towards a major intersection and a busy area of Mangere;
  - there was a medium level of traffic on the roads as well as some pedestrians; and
  - while visibility on the road was good, the pursuit took place at night, placing additional pressure on a driver's ability to react to potential hazards.
71. The Authority finds that the risk to the driver, police and the public when driving at such a speed outweighed the need to apprehend the offender (see paragraph 46 for relevant Police policy).

**FINDING**

For a short time, the pursuit reached a speed of 150kph in a 60kph speed zone, which was not justified by the circumstances and was contrary to policy.

**Ongoing risk assessment and the option of abandoning the pursuit**

72. Officers A and B carried out ongoing risk assessments prior to and during this pursuit, as required by policy (see paragraphs 13, 14 and 19).
73. The pursuit ended when the officers saw Mr Kao Aue lose control and crash into a steel sign post just after the intersection of Kirkbride Road and Ascot Road.
74. At the time of the crash, Officer B was still providing the dispatcher with initial information and risk factors in relation to the pursuit.
75. Officer A had already decided to abandon pursuit if the Mr Kao Aue continued to drive in the same manner after the intersection with Ascot Road (see paragraph 19).
76. There was insufficient time and information for a decision to be formed by the pursuit controller as to whether abandonment was appropriate.

**FINDINGS**

Officers A and B carried out ongoing risk assessments as required by policy.

Officers A and B were assessing the risks and the Authority is satisfied that, if Mr Kao Aue had continued to drive in the same manner for much longer, they would have abandoned the pursuit.

The pursuit was over before the pursuit controller was able to make a determination on abandonment.

## CONCLUSIONS

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77. Api Kao Aue demonstrated by his actions that he was prepared to risk his life and the lives of others by driving in the manner that he did.
78. Officers A and B were justified in law and policy in commencing the pursuit.
79. Other than the high speed reached by Officer A, the pursuit was conducted in accordance with policy.
80. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act) the Authority has formed the opinion that the extremely high speed reached for a short time by Officer A during the pursuit was unjustified.
81. Pursuant to section 27(2) of the Act the Authority recommends that Officer A is reminded of the risks of pursuing at such a high speed.

JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

22 JUNE 2012

# 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 Judge Sir David Carruthers 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.



**IPCA**

Independent Police Conduct Authority  
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