

*Independence*

*trustworthiness*

*accountability*



**Report on a Fatal Pursuit  
on 9 April 2007**

*vigilance*  
*integrity*

June 2009



**IPCA**

Independent Police Conduct Authority  
Whaia te pono, kia puawai ko te tika



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June 2009

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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At about 6.35pm on Monday 9 April 2007, a blue Subaru Impreza WRX crashed on Kahikatea Flat Road, Dairy Flat, Rodney, injuring its four teenage occupants. The front seat passenger, 17-year-old Jamie Lance McElrea, died in hospital the following day.
2. At the time of the crash, the Subaru was being pursued by an unmarked Police car.
3. The incident was notified to the Independent Police Conduct Authority and Authority investigators carried out an investigation.
4. In addition, Mr Mark McElrea, father of Jamie McElrea, wrote to the Police, the Office of the Ombudsmen, and the Authority in connection with the crash. His correspondence included a list of questions that he wished to have answered.
5. This report describes the events that took place on the afternoon and early evening of 9 April 2007, which culminated in the death of Jamie McElrea. It examines the actions of the driver, Troy Anderson, and the actions of the Police officers involved in relation to the relevant laws and Police policies.





# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## EVENTS OF 9 APRIL 2007

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### Events prior to the pursuit

6. At about 10am on 9 April 2007, Troy Anderson, Matthew Anderson (aged 17, no relation to Troy) and Jamie McElrea attended a barbeque in Orewa. All three consumed alcohol.
7. At approximately 5pm, Troy and Jamie left the barbeque and went to Troy's home to pick up his Subaru Impreza WRX.
8. Troy was a disqualified driver, and told his parents that Jamie would be driving the Subaru.
9. Jamie was also a disqualified driver but had told Troy's parents that his disqualification period had ended and he was allowed to drive.
10. Jamie then drove Troy back to the barbeque. At about 6.15pm Troy, Jamie, Matthew and Kayla Hewison (aged 18) left to buy some beer. Troy drove, with Jamie in the front passenger seat and Matthew and Kayla in the back.

### Stage 1

11. At about 6.20pm Officer A, a member of the Orewa Strategic Traffic Unit who was on patrol in an unmarked Police car, saw the Subaru heading west on Hibiscus Coast Highway, approaching the Silverdale Interchange. Officer A said he was concerned at the Subaru's "*high speed*" and decided to follow it. He did not at that stage activate the patrol car's lights and siren.

### Stage 2

12. Officer A followed the Subaru for about 1.4 kilometres, driving through two roundabouts at the Interchange and continuing down the highway towards Pine Valley Road, where the Subaru turned right.

13. Due to the *"the speed and manner he [Troy Anderson] went through the roundabout"*, the officer decided to stop the Subaru and activated his lights and siren. He stated that this occurred as he was turning into Pine Valley Road.
14. At this stage the officer was about 50-100 metres behind the Subaru. He did not explicitly state that he had been exceeding the highway's 80kph speed limit but, given the Subaru's speed and the fact that he was close behind, it is a reasonable assumption that he had.
15. Officer A did not inform the Police Northern Communications Centre (NorthComms) at the time he activated his lights and siren.
16. Kayla Hewison, a rear seat passenger in the Subaru, stated that the Subaru's speed was about 120kph. The occupants saw the Police car as they turned into Pine Valley Road.

*"Troy said "it's not my day", and began to drive faster...*

*I got fucken scared. We were overtaking cars on blind bends. Our speed was around 150km/h plus. I started yelling at Troy, saying 'fucken slow down we're all going to die'."*

17. Matthew Anderson, the other back seat passenger, said that he saw the Police car earlier, as the Subaru had driven through the roundabout. He said:

*"I felt the car speed up, Troy didn't say anything. I don't know how fast we were going but we were going for it. The police car had its lights on. I don't recall hearing a police siren at that time. The police car was about 10 metres behind us and I started to get worried going around the corners because we were going so fast."*

18. Troy Anderson, the driver of the Subaru, refused to co-operate with the Police inquiry.
19. Officer A followed the Subaru with his lights and siren activated, but the distance between the two vehicles increased to about 200 meters. He estimated that his top speed was 130 kph. The speed limit on Pine Valley Road is 100 kph.
20. After about 500 metres he saw the Subaru lurch to one side, almost lifting, as it went around a corner at speed. He then lost sight of it. The officer later described the driving as *"reckless"* and said:

*"I lost sight of him on the corner because he was so far ahead of me and due to the manner of driving and the speed he was driving I decided to pull out from the pursuit."*

21. Officer A turned off his lights and siren, reduced his speed to between 90 and 100kmh and continued driving along Pine Valley Road following the direction of the Subaru.
22. He later explained that he had not informed NorthComms when he activated his lights and siren because he had not believed at that time that he was involved in a pursuit, and because:

*"At that stage I wanted to see the reaction of the vehicle when I put my siren and lights on, what he was going to do. I was in an unmarked vehicle as well."*

### Stage 3

23. Officer A drove for 3.5km along Pine Valley Road until he came to intersection with Kahikatea Flat Road. There, he noticed the Subaru, two vehicles ahead, in a line of traffic.
24. He stated that he activated his lights and siren. Troy Anderson immediately pulled out of the line of traffic, overtook the three vehicles in front, and turned left at speed into Kahikatea Flat Road.
25. Officer A followed the Subaru which he later described as being *"100 metres up the road and accelerating away at high speed"*. He said that he was travelling at about 120-130kph in a 100kph zone, and had not had a chance to read the Subaru's registration plate.
26. Kayla Hewison said that at this time all the occupants were *"freaking out, yelling and screaming for Troy to stop"*. She recalled the Police car initially being about one car-length behind, and then *"...seeing our speed at 200km/h plus and I remember Jamie saying 'you're going to kill us man'."*
27. Officer A said that he kept losing sight of the Subaru on corners, as it was accelerating away. On one corner the Subaru overtook a vehicle, at a speed estimated by two witnesses to be between 150-170kph.
28. Officer A described this overtaking move as *"Pretty dangerous because Kahikatea Flat Road is a windy road, it has got no street lights, it is not an even road. I'd say it was reckless to dangerous driving."*

29. Troy Anderson then overtook a second vehicle on a blind corner and, soon afterwards, lost control of the Subaru which crossed two lanes, crashed into a grass bank, then rolled several times, ejecting three of the four occupants before coming to rest upside down in a culvert.
30. Officer A was too far behind to see the loss of control and crash.
31. He had followed the Subaru for a total of eight kilometres but did not communicate with NorthComms until he came across the crash site. He later explained that he did not notify NorthComms during stage 3 because:

*"To call the pursuit in you would have to take one hand off the steering wheel to grab the radio to call the pursuit in and my understanding of driving at that speed is that it is a danger..."*

32. Though Officer A said that he had activated his lights and siren, three of the four independent witnesses who he passed just prior to the crash or who saw him arrive at the crash scene say that only the lights were operating, not the siren. The fourth witness could not recall whether the siren was operating. In the recording of Officer A's call to NorthComms following the crash, music can clearly be heard playing in the background but no siren can be heard.

### Events following the crash

33. First on the scene of the crash was the driver of the second car overtaken by the Subaru. He saw the debris and a man lying motionless on the road, stopped his vehicle at the side of the road and dialled 111 from his mobile phone.
34. The witness was standing beside his car on the telephone when Officer A drove up to the scene, approaching from the same direction. The officer drove through the crash scene to a driveway about 90 metres down the road, turned around, drove back through the scene and parked next to the witness's vehicle. He said:

*"...the first thing I saw was one of the passengers was lying in the middle of the road and I had to avoid hitting him because I came around the corner and he was lying across the road in the middle of the road. There was a vehicle on the left hand side stationary, I had to go around it. When I looked it looked like debris, I then swerved to the left and noticed it was one of the occupants from the vehicle."*



35. Officer A parked in front of the man who was lying unconscious in the middle of the road. He said that he chose this location in order to protect the man from vehicles that may come around the corner.
36. The driver of the car that was first on the scene described the Officer A's approach as follows:
- "He was quite a way back; he would have been going about 100km/h. He had time to react."*
37. And further:
- "Once he saw me he slowed right down, went right around me and he must have seen the body because he swerved again to miss it."*
38. The witness described Officer A's speed driving through the scene at 40-50kph, and confirmed that he drove through the scene, turned around and came back through it. The witness described Officer A as seeming *"a little bit shocked by the whole scene"*.
39. At 6.34pm Officer A radioed NorthComms advising *"need assistance on Kahikatea Flat Road just by State Highway 17 probably about 2 k's from that, had a failing to stop, just started it and the vehicles gone off the road."* Three local Police patrols responded to this call.
40. One minute and 24 seconds later, Officer A again radioed NorthComms advising *"Ambo, we need ambo here, we've probably got a fatal."*
41. Another officer, who was en route to the scene, radioed NorthComms for an ambulance, Fire Service and the Police Serious Crash Unit.
42. Almost immediately on the scene was a nurse who had been pulling out of a neighbouring driveway when the Subaru and Police patrol drove past. She and a doctor who lived close by gave first aid to the victims.

## POLICE INVESTIGATIONS

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### Criminal

43. Police carried out a criminal investigation into the incident, which led to charges being laid against the driver of the Subaru, Troy Anderson.
44. Troy Anderson later pleaded guilty to reckless driving causing the death of Jamie McElrea, reckless driving causing injury to Kayla Hewison, driving

whilst disqualified, and failing to stop for red and blue flashing lights. He was sentenced to two-and-a-half years' imprisonment and disqualified from driving for four years.

### Internal

45. Contemporaneously, Police started an internal investigation into the pursuit, primarily relating to the actions of Officer A. This investigation also addressed more than 100 questions asked by Jamie McElrea's father.
46. When spoken to by a senior sergeant a few days after the crash, Officer A told him that a pursuit had not taken place and that there was no need for him to submit an internal pursuit report.
47. However, the investigation concluded (among other things) that Officer A was in a 'pursuit', as defined in the Police pursuit policy, and had failed to fulfil his obligations under that policy.

### POLICE CRASH ANALYSIS

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48. The Police Serious Crash Unit's analysis of the crash focused on three principal areas: the environment; the vehicle; and the people involved. Their conclusions follow.

#### Environment

49. The weather was fine and dry and visibility was good at the time of the crash. There were no environmental obstacles to obscure the driver's vision.
50. Kahikatea Flat Road is semi-rural. It services several residential properties and connects SH16 with SH17. The road has a well-travelled chip-seal surface and is governed by a 100kmh speed limit.
51. There were no foreign substances located on the roadway that had any influence on the crash.

#### Vehicle

52. A full mechanical inspection did not reveal any mechanical faults that could have caused the crash. An inspection by On Road NZ Ltd concluded that:

*"This vehicle appears to have been operating in a normal manner prior to the crash and was of warrantable condition".*

## PEOPLE

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### The driver – Troy Anderson

53. Troy Anderson was a disqualified driver who had recently consumed alcohol.
54. An analysis of blood taken from him three hours after the crash found that he had 25 milligrams of alcohol per 100 millilitres of blood. The legal limit for a driver under the age of 20 is 30 milligrams of alcohol per 100 millilitres of blood. Environmental Science and Research (ESR) estimated Troy's blood alcohol level at the time of the crash as *"within the approximate range of 55 to 85 milligrams per 100 millilitres"*, based on alcohol clearing from his blood at a rate of 10 to 20 milligrams per 100 millilitres per hour.
55. The Serious Crash Unit commented that Police were attempting to stop Troy at the time of the crash, and he was being asked to stop by the other occupants of the Subaru. Troy was travelling too fast, and lost control of the vehicle.
56. Troy Anderson had come to the notice of Police on several occasions in 2006 and 2007 for driving and vehicle related matters. He had previous convictions for careless driving, driving whilst his licence was suspended, and driving with excess blood alcohol.

### The deceased – Jamie McElrea

57. Jamie McElrea was sitting in the front passenger seat at the time of the crash.
58. The evidence suggests that Jamie was wearing his seatbelt but that his seat was reclined to such a degree that the seatbelt was ineffective.
59. When the Subaru rolled and struck the bank, Jamie was thrown clear, before striking a concrete power pole.





# Relevant Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

## RELEVANT LAWS

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60. Section 114 of the Land Transport Act 1998 and sections 314B and 317A of the Crimes Act 1961 empower a Police officer in uniform or in a vehicle displaying flashing lights and sounding a siren to stop a vehicle for traffic enforcement purposes, to conduct a statutory search, or if there are reasonable grounds to suspect the vehicle contains a person who is unlawfully at large or has committed an offence punishable by imprisonment. When such a vehicle fails to stop for Police a pursuit may be commenced.

## POLICE POLICIES

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61. Police General Instruction (GI) V001 governs Police Pursuits and Urgent Duty Driving. This GI had come into effect in 2004.
62. The GI states that all staff must be aware that urgent duty and pursuit driving can pose risks to the safety of both Police staff and the public, and that the driving conduct of Police is subject to considerable public scrutiny for this reason. It also states that the special role of Police and the risks involved in these activities require officers to demonstrate a high standard of professionalism and care when carrying out these duties.

### Pursuits

63. GI V001 annex one, Conduct and Management of Pursuits (referred to hereafter as the 'pursuit policy'), states:

*"A pursuit occurs when the driver of a vehicle which has been signalled by a police officer to stop, fails to stop and attempts to evade apprehension, and police take action to apprehend the offender."*

64. The policy assigns primary responsibility for the initiation, continuation and conduct of a pursuit to the officer driving the pursuing Police vehicle. The driver cannot be directed to commence or continue a pursuit against their judgment, and a driver's decision not to commence a pursuit, or to abandon a pursuit in progress, cannot be overridden.

#### *Risk assessment*

65. Before commencing a pursuit, an officer must undertake a risk assessment, which involves consideration of a range of factors including speed and other behaviour of the pursued vehicle, traffic and weather conditions, the identity and other characteristics of the people in the pursued vehicle, the environment, and the capabilities of the Police driver and vehicle. The officer must then determine whether *"the need to effect immediate apprehension of the offender is outweighed by the risks posed by a pursuit to the public, the occupants of the pursued vehicle, or police"*.

#### *Driver's responsibilities*

66. Pursuing drivers must comply with relevant legislation and drive in a manner that prioritises the safety of the public and staff.
67. Other responsibilities of the driver during the course of a pursuit include:
- activating warning devices (lights and siren);
  - informing the communications centre that they have commenced pursuit and maintaining radio contact with the communications centre, providing situation reports regularly and as requested; and
  - continually reassessing the continuation of the pursuit according to the risk framework in paragraph 65 above, which prioritises the safety of all involved.

#### *Abandonment and recommencement*

68. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender.
69. 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</i>
2	<i>Immediately reduce speed to increase the distance between the offender's 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>

70. In relation to recommending a pursuit, the policy states:

*"An abandoned pursuit is not to be recommenced without the approval of the Pursuit Controller. Approval is only to be considered if the situation has changed following abandonment, and where risk assessments [referred to in paragraph 65 above]... indicate that the risks involved in pursuit have reduced so that the need to effect immediate apprehension is no longer outweighed by the risks posed by recommencing pursuit."*

### **Urgent duty driving**

71. GI V001 annex two, Police Driving Policy: Urgent Duty Driving (referred to hereafter as the 'urgent duty driving policy'), states that the overriding principle is:

*"No duty is so urgent that it requires the public or the police to be placed at unjustified risk."*

72. Urgent duty driving is defined as occurring when:

*"A police officer is driving on duty and compliance with speed limits, traffic signals or stop or give way signs would be likely to prevent or hinder the execution of that duty; and*

*The driver is:*

- *Responding to a critical incident; or*
- *Apprehending a driver for a traffic or criminal offence; or*
- *Engaged in a pursuit."*

73. The policy states:

*"A police officer engaged in urgent duty driving must use flashing blue and red lights and/or siren unless a "silent approach" is tactically appropriate and can be used safely in the circumstances...."*

74. In considering whether or not urgent duty driving is appropriate, an officer must consider:
- a. the time of the incident, particularly whether it is currently in progress;*
  - b. the seriousness of the incident, such as the significance of any threat to the safety of any person; and*
  - c. the proximity of other units to the incident.”*
75. In addition, an officer must give consideration to factors such as: the appropriate speed given conditions and nature of the incident; weather conditions; their driving capabilities; vehicle capabilities such as whether the vehicle is marked or unmarked; the activation of warning devices; traffic conditions such as speed and volume; and environmental factors such as road type, houses and pedestrians.





# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

## ISSUES CONSIDERED

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76. The Authority's investigation considered the following issues:
- i) Prior to the crash, was Officer A engaged in either a pursuit or urgent duty driving, as defined in the pursuit policy or the urgent duty driving policy?
  - ii) If Officer A was engaged in pursuit or urgent duty driving, did he comply with the relevant policies – in particular, in relation to communication, activation of lights and siren, abandonment and recommencement, and driver responsibilities following a pursuit?
  - iii) Was the speed of the pursuing patrol reasonable in the circumstances?
  - iv) Were the actions of Officer A, immediately following the crash, appropriate?
77. Mr Mark McElrea asked the Police over 100 questions connected with the pursuit and the death of his son Jamie. The Authority is satisfied with the responses given to Mr McElrea by the Police, but addresses in more detail the following four issues:
- Did the Police car driven by Officer A come into contact with the Subaru prior to the crash?
  - Did the Police car driven by Officer A have any repairs done to it following the pursuit?
  - Following the crash, did Officer A park the Police car in a driveway some distance from the crash scene?
  - Officer A's transfer to other duties.

## I. ENGAGEMENT IN PURSUIT OR URGENT DUTY DRIVING

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**Prior to the crash, was Officer A engaged in either a pursuit or urgent duty driving, as defined in the pursuit policy or the urgent duty driving policy?**

78. In addressing this issue, the Authority looked at the three stages of this event.

### *Stage 1*

79. During the initial stage, Officer A followed the Subaru for 1.4 kilometres along Hibiscus Coast Highway, exceeding the speed limit, and without operating his lights and siren.

80. As he had not signaled for the Subaru to stop, the officer was not legitimately engaged in pursuit.

81. As he was following the Subaru, rather than actively apprehending the driver for traffic or criminal offending, he was not engaged in urgent duty driving.

### FINDING

At this stage, Officer A was not legitimately engaged in urgent duty driving or pursuit as defined in the respective policies. As he was not legitimately engaged in either pursuit or urgent duty driving, he had no legal justification for exceeding the speed limit.

### *Stage 2 (along Pine Valley Road)*

82. To be engaged in a pursuit, Officer A must have signaled to the Subaru to stop, the Subaru must have failed to stop and then attempted to evade apprehension, and Officer A must have subsequently taken action to apprehend the driver of the Subaru. This is what occurred as Officer A activated his lights and siren, the Subaru accelerated away, and Officer A followed at speed along Pine Valley Road in an attempt to apprehend the driver.

### FINDING

During stage 2 of this event Officer A was engaged in a pursuit, as defined in the pursuit policy.

### *Stage 3 (along Kahikatea Flat Road)*

83. When Officer A saw the Subaru at the intersection of Pine Valley Road and Kahikatea Flat Road, he signaled for it to stop. Troy Anderson attempted to evade apprehension by speeding away, and the officer again followed at speed in an attempt to apprehend the driver.

**FINDING**

During stage 3 of this event Officer A was engaged in a pursuit, as defined in the pursuit policy.

**II. COMPLIANCE WITH POLICY**

84. For relevant policy refer to paragraphs 61-70.

**Did Officer A comply with the pursuit policy regarding communication with NorthComms?**

85. Officer A did not communicate with NorthComms, as required by the pursuit policy, during either Stage 2 (along Pine Valley Road) or Stage 3 (along Kahikatea Flat Road). His first contact with NorthComms was at 6.34pm when he came across the crash site and called for assistance.
86. The officer explained that he did not inform NorthComms during Stage 2 as he did not believe he was engaged in a pursuit, and he did not inform NorthComms during Stage 3 as he believed it would be dangerous to take his hand from the wheel to use the radio (see paragraph 31).
87. He did state that he conducted risk assessments as required under the policy, and made a conscious choice to withdraw when the situation became too dangerous.
88. The officer's failure to inform NorthComms is not merely a technical breach of the policy. Communications centre oversight is crucial to the safe conduct of pursuits, as it allows for the pursuit controller – a senior officer – to coordinate the pursuit and to independently assess the risks in order to determine whether the pursuit is justified or should be abandoned.

**FINDING**

Officer A did not comply with the policy as it relates to communication with NorthComms either prior to or during stages 2 and 3.

**Did Officer A comply with the pursuit policy regarding activation of lights and siren?**

89. During stage 2, Officer A had his lights and siren activated, in accordance with the pursuit policy.
90. As noted in paragraph 32, though Officer A stated that he had activated his lights and siren during stage 3, this is not supported by independent

witnesses or by the recording of Officer A's call to NorthComms in which music can be heard in the background.

91. It cannot be said with certainty whether or not Officer A had activated his siren during stage 3. It is possible that he had activated both his lights and siren at the commencement of the stage, but had turned off the siren sometime prior to the crash.

#### FINDING

Officer A activated his lights and siren in accordance with policy during stage 2. During stage 3, the Authority finds on the balance of probabilities that Officer A did not have his siren operating immediately prior to the crash.

### **Did Officer A comply with the pursuit policy regarding abandonment and recommencement of pursuits?**

*Was the pursuit abandoned in accordance with the pursuit policy between stages 2 and 3?*

92. The policy sets out five steps that must be followed in order to properly abandon a pursuit (see paragraph 69 above). In this case, it was Officer A's decision to pull out of the pursuit and consequently only steps 2-5 of the abandonment process apply.
93. Officer A did immediately reduce his speed to the speed limit and deactivate warning devices, but did not stop his patrol car or report the abandonment to NorthComms.

#### FINDING

Officer A did not abandon the pursuit in accordance with the process outlined in the pursuit policy.

*Should Officer A have abandoned the pursuit during stage 3?*

94. The policy states that, where the need to effect immediate apprehension is outweighed by the risks posed by the continuation of the pursuit, the driver must abandon the pursuit.
95. Officer A had witnessed the Subaru overtaking a vehicle at very high speed – estimated by two witnesses to be between 150-170 kph – and regarded the manoeuvre as *“reckless to dangerous”*. The Subaru then overtook a second vehicle on a blind corner.

96. In the Authority's view, when the Subaru overtook the first vehicle, the risks posed by the continuation of the pursuit outweighed the need to effect immediate apprehension.
97. It cannot be said with any certainty that abandonment would have resulted in a modification in Troy Anderson's driving.

**FINDING**

Officer A should have abandoned the pursuit.

*Did Officer A comply with the pursuit policy in recommencing the pursuit on Kahikatea Flat Road?*

98. To recommence a pursuit, Officer A should have sought the approval of the pursuit controller at NorthComms, and carried out a further risk assessment that indicated that the risks involved had reduced so that the need to effect immediate apprehension was no longer outweighed by the risks.
99. Officer A had no communication with NorthComms prior to recommencing the pursuit, and there is no indication that he carried out a further risk assessment.

**FINDING**

Officer A did not comply with the pursuit policy in relation to recommencement.

**Did Officer A comply with the pursuit policy regarding driver responsibilities after a pursuit?**

100. A driver who commences a pursuit is required to complete a 'Road Pursuit' report and must submit a copy of that report to his or her immediate supervisor prior to completion of duty on that day.
101. At interview, Officer A was asked why he did not submit such a report, when his supervisor had queried him about submitting one in the days following the pursuit. The officer stated that at that time he did not think he had been involved in a pursuit.
102. Officer A accepted, in hindsight, that he had been involved in a pursuit and therefore should have submitted a 'Road Pursuit' report.

**FINDING**

Officer A did not comply with the policy as it relates to driver responsibilities following a pursuit.

SPEED OF PURSUIT

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**Was the speed of the pursuing patrol reasonable in the circumstances?**

103. Officer A said that his top speed throughout the pursuit was 130kph.
104. One witness, who was stationary on a driveway waiting to turn into Kahikatea Flat Road, estimated that the Subaru was travelling at a 150-170 kph when she saw it overtake another car. Commenting about the speed of the Police car, she said:

*"At that time it would have been about 100 metres away and seemed to be going a lot slower."*

105. The driver of one of the cars that was overtaken by the Subaru estimated that that it was travelling at 160kph and said about the Police car:

*"He was quite way back; he would have been going about 100kph..."*

## FINDING

The evidence supports Officer A's assertion that his top speed was 130kph. This speed was reasonable in the circumstances.

IV. ACTIONS AT THE CRASH SCENE

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**Were the actions of Officer A, following the crash, appropriate?**

106. Officer A drove through the crash scene, then turned in a driveway and drove back through the scene again.
107. Evidence from independent witnesses suggested that Officer A would have had time to react as he came upon the scene, but seemed *"a little bit shocked"*.
108. Police officers are trained to preserve and protect the scenes of serious incidents. Officer A should not have driven through the crash scene. Once he had driven through the scene, he should not have driven back through it.

## FINDING

Officer A's actions following the crash were unprofessional.

## V. QUESTIONS ASKED BY MARK MCELREA

### Did the police car driven by Officer A come into contact with the Subaru prior to the crash?

109. Kayla Hewison told Mr McElrea, and also Police, that the Subaru was being pursued by a black and white Police car with push bars at the front. She said that when travelling along Kahikatea Flat Road:

*"The Police car was directly behind us, right up our arse. I felt a bang before we lost control and went off the road."*

110. In a second statement to Police, made a few months later, she was questioned further on the matter, as follows:

*Q: You stated to the Police that the cop car chasing you was Black and White with push-bars on the front. Do you still believe that?*

*A: Yes, yes the car was a Black and White police car, a Holden, with black bars on the front, they looked spongy, the lights were going on the roof. They were red and blue, the siren was going.*

.....

*Q: There was a bang prior to the Subaru going off the road. Are you sure the pursuing police car hit the rear of the Subaru?*

*A: I know it did because I got shunted forward.*

*Q: Did you physically see the police car hit the Subaru?*

*A: Yes, I was looking out the back window.*

111. The pursuing Police car was an unmarked red Holden sedan.
112. Other than Kayla, all witnesses say that the pursuing patrol was some distance behind the Subaru at the time of the crash. In particular, the first driver to come across the crash stated that he had got out of his car and was on the phone to emergency services before Officer A arrived on the scene.

#### FINDING

The Police car driven by Officer A was an unmarked red sedan. It did not come into contact with the Subaru.

**Did the police car driven by Officer A have any repairs done to it following the pursuit?**

113. The Police investigation unequivocally established that the pursuit vehicle did not have any repairs, paint or panel work done to it after the crash.

**FINDING**

The pursuit vehicle did not suffer any damage as a result of the pursuit. No repairs were carried out on the vehicle.

**Following the crash did Officer A park the police car in a driveway some distance from the crash scene?**

114. Mr McElrea suggested that Officer A drove through the crash scene, parked the Police car in a driveway 90 metres away, and walked from there to the scene – the inference being that the Police car was damaged when it came in contact with the Subaru, was concealed, and later taken away to be repaired.
115. An occupant of the house at the driveway concerned, said that about 10 minutes after the crash he saw an unmarked Police car parked in his driveway. His recollection was that it was a *“dark red, maroney colour”*. Sometime later the car had gone from his driveway but he could still see Police lights at the crash scene.
116. The weight of evidence is that Officer A drove through the crash scene, turned around in a driveway, drove back through the scene and parked at the side of the road, directly in front of one of the victims, who was lying in the middle of the road.
117. The unmarked Police car in the driveway was not that driven by Officer A. It had been driven to the crash scene by an officer who responded to Officer A’s radio call for assistance.

**FINDING**

Officer A did not leave his car parked in a driveway. The Police car seen in the driveway was not involved in the pursuit.



### Officer A's transfer to other duties

118. It has been suggested that Officer A was transferred to a non sworn position after the pursuit to avoid facing disciplinary action.
119. The time frame relating to Officer A's change in role is as follows:
- 5 January 2007            Position advertised
  - 5-19 January 2007      Officer A applied
  - 7 March 2007            Officer A interviewed
  - 7 or 8 March 2007      Officer A offered position
  - 9 April 2007            Pursuit
  - 24 April 2007            Officer A provisionally appointed
  - 16 June 2007            Officer A resigned as sworn member
  - 17 June 2007            Officer A commenced non sworn duties
120. Prior to the pursuit, Officer A had applied for, been interviewed and offered a non sworn position. He was provisionally appointed to that position on 24 April 2007 and resigned as a sworn member on 16 June 2007.
121. Due to this, Officer A did not face disciplinary action. The Police disciplinary system in place at the time of the pursuit applied to sworn members of Police only.
122. The Police have indicated that had Officer A remained a sworn member, disciplinary action against him would have been likely.





# Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

123. Officer A was in pursuit of the Subaru, as defined in the pursuit policy, during both stage 2 and stage 3 of this event. He was justified in commencing the initial pursuit, and his speeds during the pursuit were reasonable. However, he did not comply with the pursuit policy when he failed to:
- notify NorthComms of the pursuit;
  - communicate any risk assessment to NorthComms either prior to or during the pursuit;
  - correctly abandon the pursuit;
  - correctly recommence the pursuit;
  - comply with the provisions relating to driver responsibility following a pursuit.
124. Officer A also breached policy by not having his siren operating immediately prior to the crash, and he acted unprofessionally by driving through the crash scene.
125. During stage 1, for 1.4 kilometres, Officer A was exceeding the speed limit and was not justified in doing so as he was not engaged in urgent duty driving or a pursuit.
126. Officer A's car did not come into contact with the Subaru and did not suffer any damage during the pursuit.

127. Officer A's actions, despite some of them being contrary to policy, did not cause the crash. The primary reason for the crash was that Troy Anderson, intoxicated and inexperienced, drove at speed and lost control of the vehicle.

A handwritten signature in black ink, appearing to read 'L P Goddard', written in a cursive style.

Hon Justice L P Goddard

Chair

Independent Police Conduct Authority

# 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. It is chaired by a High Court Judge and has two other members.

Being independent means that the Authority makes its own findings based on the facts and the law. In this way, its independence is similar to that of a Court.

The Authority has two investigating teams, made up of 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 can make findings and recommendations about Police conduct.



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