

Independence
trustworthiness
accountability

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Serious bodily harm to a Police officer
during Police pursuit

December 2010



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



December 2010

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Contents

Introduction	3
Background	5
Laws and Policies	13
The Authority's Investigation	17
The Authority's Findings	19
Conclusions	27



Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At approximately 3.47am on 24 March 2009, Police initiated a pursuit of a Ford Fairlane vehicle in Albany, Auckland. Whilst placing spikes (tyre deflation device) in Esmonde Road, Northcote, in an attempt to stop the car, Officer C was struck by the Ford Fairlane and suffered serious bodily harm¹.
2. The Police notified the Independent Police Conduct Authority of the pursuit and the injury to the officer pursuant to section 13 of the Independent Police Conduct Authority Act 1988 (the Act), and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

¹ Within the definition agreed between the Authority and the Police.

Officers involved

Officers	Roles	Comment
Officer A	Constable Initiated pursuit. Driving marked dog van.	Gold licence 'A' rated vehicle
Officers B & C	Constables Unit with stinger spikes. Marked patrol car. Officer C seriously injured when deploying spikes.	Officer B had gold licence. 'A' rated vehicle
Officers D & E	Constables Marked patrol car. Following patrol during pursuit. Officer E in charge of commentary during pursuit.	Officer D had gold licence. 'A' rated vehicle
Pursuit controller	NorthComms shift commander. Pursuit controller.	On night of incident was a sergeant in rank, and was filling in for the shift commander.
Officer G	'On duty' field shift commander for section 2, North Shore. In patrol car when pursuit commenced. Officer A sought his permission to continue the pursuit following Officer E being hit. Otherwise did not intervene in pursuit. Took control of the crash scene.	
Officers H & I	Joined pursuit, following the approval to recommence, after the collision (at approx 3.56:30am).	
Dispatcher	Dispatcher at NorthComms.	



Background

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INDEPENDENT POLICE CONDUCT AUTHORITY

SUMMARY OF EVENTS

3. During the morning of 22 March 2009, Sheean Heta stole a white Ford Fairlane car from Otahuhu. He removed the rear registration plate and replaced it with one from a scrapped vehicle that had belonged to his mother.
4. At approximately 3.45am on 24 March 2009, Officer A, a Police dog handler, was patrolling the Albany industrial and commercial area in a marked dog van when he saw the Fairlane. Officer A considered that the Fairlane “*did not look right*”, and drove up to it to obtain its registration number.
5. Before Officer A could get close enough to read the Fairlane’s registration, the driver accelerated away. Officer A decided to stop the Fairlane due to the nature of the driving. At this stage Officer A did not know that the Fairlane was stolen or that the occupants had just committed a burglary.

Initiation of the pursuit

6. Officer A immediately activated his red and blue flashing lights, but not his siren, and advised the Northern Communications Centre (NorthComms) at 3.47:57am:

“Comms [call sign] I think I’ve got a failing to stop off Apollo Drive Orbit Drive heading towards Rosedale, white falcon....yep failing to stop.....Comms-[call sign] you copy?”

7. The NorthComms dispatcher immediately gave the pursuit warning to Officer A, and commenced the required risk assessment. Officer A advised NorthComms of the direction of the pursuit, that he thought the vehicle had three occupants, that the vehicle was a white Falcon, possibly a Fairlane, that speed was 110kph, that there was no traffic and that he was a gold classified driver (the highest level of classification). This area was governed by a 50kph speed limit.
8. Immediately after the initial pursuit information had been transmitted, NorthComms tried to find a Police vehicle carrying spikes which could be used to stop the Fairlane. A

Police car was directed to: *"Come away from your burglary and set up spikes bottom of East Coast Bays Rd please."*

9. Officer A continued to advise NorthComms of direction of travel, speed and vehicle details. At 3.49:18am he gave the vehicle registration and advised that the Fairlane was being driven in an erratic manner: *"He's looking to ram me Comms...he's slowing right down....three up....definitely one in the back...he's taken off again...past Maxwellton"*. A few seconds later NorthComms asked the reason for pursuit and for the speed and manner of driving. Officer A answered these questions, advising that the driver had turned his lights off, but that he *"was driving alright"*, his speed reports were between 110kph and 135kph. Officer A then asked that another patrol take over the commentary as he was trying to concentrate on his driving.
10. At 3.50:50am a marked patrol car (Officers D and E), that had joined in the pursuit, was instructed to commence the commentary so that Officer A could concentrate on his driving. From this point, Officer E had responsibility for radio communications, whilst Officer D (gold driver classification) drove the car. NorthComms re-issued the pursuit warning to Officers D and E.
11. At 3.52:20am (approximately four and a half minutes into the pursuit), Officer E advised NorthComms that *"manner of driving is still good speed is 115"*. The NorthComms pursuit controller immediately directed the dispatcher to abandon the pursuit.
12. Following the order to abandon, Officer D slowed down and turned his lights off. When later interviewed about this abandonment, Officer E said: *"I remember [Officer D] hit the brake and slowed right down and he turned off the lights and he pulled over and I believe we have stopped completely but because the radio was still busy we couldn't advise Comms that we have stopped."*
13. Officer A did not acknowledge or obey the order to abandon, instead he continued pursuing and radioed NorthComms saying: *"Comms that speed was 115 not 150 did you copy that"*. When asked in interview why he did not abandon pursuit, Officer A said: *"Well I continued because I did not believe the speed was 150 and that's why I clarified it with Comms and they immediately advised that we could continue."* This however was not the case (see paragraph 15).
14. In interview, the pursuit controller said that he heard the speed as 150kph, but following Officer A's clarification, said that he realised that he had *"misheard the unit"*.
15. There was no further specific instruction from the pursuit controller clarifying whether the pursuit was to be abandoned or recommenced. This absence of specific instruction together with the continued commentary between the dispatcher and Officer E, led all

pursuing units to assume that they had tacit permission to continue the pursuit. When this occurred, Officers D and E resumed the pursuit.

The use of Stinger spikes

16. Officers B and C were at the North Shore Policing Centre when they heard the pursuit commence, and NorthComms trying to find a patrol to position spikes. Officer C took a set of Stinger spikes from the boot of their patrol car and left with Officer B. Officer B was the senior officer of the two.
17. Stinger spikes are one of two authorised spiking devices that were in use by the New Zealand Police at the time of this incident. They consist of an expanding bed of sharpened hollow spikes that, when placed across the road, and driven over, embed in the vehicle's tyres and cause a controlled deflation of the tyres. Stinger spikes are designed to fully cover one lane when completely extended.
18. Officer C examined the spikes, re-attaching a lanyard, while Officer B drove their patrol car to Esmonde Road. En-route, Officer C advised NorthComms of their destination. An unknown caller acknowledged the advice from Officer C and said: *"Yeah copy all spikes at the on ramp to the motorway at Northcote copy?"* None of the three senior officers working that night; the pursuit controller, the on-duty shift commander or the night-shift duty sergeant, acknowledge making this radio call or directing Officers B and C to lay the spikes. Esmonde Road is the main access onto the Motorway south (on-ramp) from Takapuna, and at the point where the spikes were deployed, has five southbound lanes. The speed limit on Esmonde Road was 50kph.
19. At 3.53:17am, once Officers B and C had arrived at Esmonde Road, Officer B advised NorthComms that they: *"got spikes on Esmonde"*. Officer A acknowledged this radio call and confirmed that the pursuit was heading that way.
20. In a Police interview, Officer C stated that Officer B chose the location to park the vehicle – in the intersection with Fred Thomas Drive in line with the median strip running north-south, with the front of the vehicle, including the two front seats, positioned into the first southbound lane. Officer C said he thought it was relatively safe because he could see the traffic coming in both directions; he had some protection from the parked patrol car; and from a vehicle that had been directed to pull into the intersection near the Police vehicle to avoid being spiked.
21. At interview, relation to the deployment site, he said:

"It occurred to me that possibly the location we had chosen wasn't the best in deploying the spikes because of the width of the road. Admittedly aside from practice I had never operationally deployed

spikes previously, but to my knowledge spikes cover a lane and a half at the most."

22. A few seconds later Officer B advised NorthComms that the spikes were ready to be deployed. There was no conversation between NorthComms, Officer A and Officer B about positioning the spikes or the speed of the pursuit, other than a directive by Officer A to: *"Get those spikes out of the way when [Officer A] comes through"*.
23. Officer C stood on the median strip of the highway. He saw the Fairlane coming towards him in the fourth lane out from the median strip. As Officer C went to position the spikes he moved to the second lane away from the median strip. Officer C later stated that at that point:

"I was aware I was at some risk but at that stage while he was still in the fourth lane and carrying on that path I didn't have any particular concerns for my safety, no."

24. Mr Heta then drove the Fairlane from the fourth lane towards Officer C. The officer had started walking backwards when he saw the Fairlane come towards him; but Mr Heta drove across three lanes and hit him in the first lane.
25. In interview, Officer C said that he was waiting to deploy the spikes when the "car swerved sharply to the right". He said:

"Next thing I knew the car was bearing down on me, I was right in the centre of it. In all honesty I couldn't quite believe that it was happening, that he was actually intentionally aiming for me and so I started walking backwards."

26. When Mr Heta drove at Officer C, he drove over the spikes. The left rear tyre of the Fairlane burst and flew off the wheel. Mr Heta kept driving.
27. NorthComms was advised by Officers A and B, that an officer had been hit and an ambulance was requested. Officer A advised NorthComms that an ambulance was an absolute priority, saying: *"This offender rammed the officer; he rammed the officer; he lined him up."*

Continuation of the pursuit

28. At 3.54:58am (about 30 seconds after the first report that an officer had been hit) the dispatcher, under instructions from the pursuit controller, ordered that the pursuit be abandoned. When the order to abandon was not acknowledged by Officer A, the dispatcher repeated it at 3.55:08am and 3.55:14am, each time asking for acknowledgment. After the third order to abandon, Officer A acknowledged the order, replying: *"Copy...Comms he's lost a wheel Comms he's lost a wheel on Akoranga Drive can we have some advice from our Inspector?"*

29. However, despite acknowledging the order, Officer A did not actually abandon pursuit, instead he continued to pursue the Fairlane. There was no further directive from NorthComms to abandon the pursuit.
30. The pursuit continued for over a minute before Officer A radioed Officer G (the on-duty field shift commander) and specifically asked what his instructions were. Officer G immediately radioed NorthComms saying: *“Comms from [callsign] I request permission from the Inspector for [Officer A] to continue the pursuit.”* NorthComms told Officer G to standby. At 3.57:03am, two minutes after the first order to abandon, Officer A radioed NorthComms asking: *“Comms-[call sign] have I got permission to continue at 90kph?”* NorthComms immediately replied *“Affirm, permission to continue [call sign].”*
31. When Officer A was later asked why he thought NorthComms had abandoned pursuit at this point, he said: *“Well they obviously had made a decision that an officer had been hurt and they wanted to abandon the pursuit for reasons I don’t know, I don’t understand why they abandoned that pursuit at that stage.”* Officer A said further that in his experience, vehicles that have been spiked generally do not travel much further before the occupants abandon the vehicle, and that as a dog handler he *“needed to be as close to them as possible when they abandoned that vehicle”*.
32. It was put to Officer A that according to the pursuit policy, as soon as the order to abandon was made, he should have pulled over to the side of the road, stopped and turned off his lights and siren. Officer A responded with:
- “Yeah these are exceptional circumstances so yeah I made a decision that I believed was justified at the time because of the seriousness of what I had just witnessed. Our offender wasn’t just trying to get away, he lined up [Officer C] in a deliberate action. I had no idea who he was, I hadn’t seen his face, I’d only seen him from behind and I could not have identified him.”*
33. The pursuit continued with both Officer A and another patrol (Officers H and I) in pursuit. Both Officer A and Officer I provided commentary. At this stage, only the two vehicles were in pursuit.
34. At approximately 4.00:56am, Officer A radioed NorthComms advising: *“The vehicle is now on fire Comms, at the back, the vehicle is on fire, get Fire heading our way.”* NorthComms did not further question Officer A about the risk that the fire created, or the extent of the fire.
35. The pursuit continued for another four minutes until the Fairlane was driven off the Beachhaven wharf into the harbour. All four occupants were uninjured and swam out into the estuary. One was found by Police that day, the other three were found four days, one week and two weeks later respectively.

36. The pursuit had lasted approximately 16 minutes and 40 seconds over a distance of approximately 10 kilometres. The predominant speed limit was 50kph.
37. Officer C suffered mild traumatic brain injury, a dental injury, and multiple cuts, grazes and bruises of varying severity when he was hit by the Fairlane.
38. The Police crash analysis estimated the speed of the Fairlane at the time it struck Officer C to be a maximum of 62.2kph.

SHEEAN HETA

39. At the time of this incident on 24 March 2009, Sheean Heta, then aged 23, was disqualified from driving. He had over 50 previous convictions, mainly for driving and dishonesty offences; including five for dangerous driving, one for reckless driving, and five for failing to stop for red and blue flashing lights.
40. In relation to the incident Mr Heta was charged with and pleaded guilty to theft of the Ford Fairlane, burglary, driving a motor vehicle in a dangerous manner, failing to stop for red and blue flashing lights, failing to stop or ascertain injury after a crash, driving while disqualified and aggravated wounding. He was sentenced to seven years and one month imprisonment.
41. In interview, Mr Heta described his driving as dangerous because:

“...of how fast I was going. How fast I was going around corners. Sometimes the car was like sliding towards the other side of the road but sometimes I was driving on the wrong side of the road. I did that because I thought the Police would abandon the chase.”
42. He also said that he was turning his headlights on and off, and slowing down to try and get the Police car to stop, so that he could then speed off again.
43. When asked in interview why he drove into Officer C, Mr Heta said that he was “*still high on meth*” and the effects of the methamphetamine made him do what his passengers told him. He said that his male passenger suggested that he hit the officer, so he did. He estimated that he was travelling at between 80kph and 100kph when he hit the officer and that he thought that the officer might have died as a result.
44. Mr Heta described his driving as “*very dangerous*” just prior to going off the wharf and that he was worried about the car’s stability. He said he was weaving along the road, and cornering on the wrong side of the road. Mr Heta said he purposely drove through the chain fence and hit some wooden posts, but that he did not know he was on a wharf until he drove off it.

TOXICOLOGY

45. Mr Heta ran from Police following the crash off the Beachhaven wharf and could not be tested for alcohol or drug levels. He did admit smoking 'P' (methamphetamine) that night, and said that at the time of the pursuit he was still affected by it.
46. Neither Officer A nor Officer C was breath tested. However there is no evidence of consumption of alcohol, drugs or prescription drugs by either officer prior to coming on duty.

ENVIRONMENT

47. The roads travelled during the pursuit are all well sealed and well lit.
48. The weather conditions were good; it was clear and dry.

Collision with Officer C

49. Esmonde Road is a main arterial route between Takapuna and Northcote and gives access to the Northern Motorway system for travel North and South.
50. The relevant section of road has a series of intersections controlled by traffic lights. It carries traffic north and south, separated by a raised and planted traffic island.
51. The collision with Officer C occurred in the south-bound lanes at the intersection with Fred Thomas Drive. Of the five southbound lanes; one is a bus lane, one is for traffic turning right into Fred Thomas drive and three are for traffic going straight through.
52. The intersection is well illuminated.

Crash off the Beachhaven wharf

53. Beachhaven wharf is at the end of Beachhaven Road. The Fairlane drove through a chain fence and wooden barriers at the wharf before becoming airborne and landing in the tidal mud.



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Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

LEGISLATIVE AUTHORITY FOR PURSUITS

54. Under the Land Transport Act 1988, 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.
55. Section 114(2) of the Land Transport Act 1998 provides that: *“An enforcement officer in a vehicle following another vehicle may, by displaying flashing blue, or blue and red, lights or sounding a siren, require the driver of the other vehicle to stop.”*

POLICE PURSUIT POLICY

Definition

56. A pursuit 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.

Overriding principle

57. Under the Police pursuit 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

58. Under the policy that applied at the time of this crash (a new policy was introduced on 10 July 2009), before commencing a pursuit an officer was required to first undertake a risk assessment. This involved consideration of the speed and other behaviour of the offending 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”*.

59. Throughout a pursuit, Police must continue to assess the risks involved and they must abandon it if the risks to safety outweigh the immediate need to apprehend the offender.

Communication requirements

60. When a pursuit commences, the communications centre must be notified. The communications centre must provide the following warning: *“If there is any unjustified risk to any person you are to abandon pursuit immediately.”* The pursuing officers must acknowledge this warning. The pursuing officers must provide information about the pursued vehicle, location, direction of travel and reason for pursuit. The communications centre must prompt for information about speed, road conditions, traffic and weather conditions, manner of driving and driver identity, and Police driver and vehicle classifications.
61. Under the policy, the driver of a Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, 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.
62. The driver (or their passenger as appropriate) is also to: *“**activate warning devices (lights and siren)**”*. [**bold** is Authority emphasis]
63. 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.
64. The dispatcher at the Police communications centre must maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 60, and communicate instructions from the pursuit controller.
65. 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.

Driver and vehicle classification

66. Under the policy, pursuits may only be carried out by drivers who have qualified under the Police Professional Driver Programme. The policy also places restrictions on which Police vehicles can take part in pursuits. The policy states that when considering whether to commence a pursuit, the following factors must form part of the risk assessment: *“Officer capabilities, such as experience, whether they are operating single-crewed, and the limitations of their vehicle (including whether it is marked – in a pursuit an unmarked vehicle is to be replaced by a marked vehicle as soon as possible).”*

Abandonment and recommencement

67. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender.
68. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

Step	Action
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>

69. In relation to recommencing 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 paragraphs 58 and 59 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.”

Spikes

70. The policy permits the use of spikes during a pursuit. They must be deployed by a trained operator and can only be used to stop a fleeing vehicle where no other, less dangerous, means of stopping the vehicle are readily available.
71. The Police policy ‘Tyre Deflation Devices’ regulates the use of spikes.
72. Under the policy the pursuit controller must (amongst other things):
- consider whether to deploy spikes;

- supervise and monitor the officers involved in deploying the spikes;
- maintain communication with the deploying officer; and
- regularly question the deploying officer about the road and traffic conditions.

73. The deploying officer must (amongst other things):

- be trained in deploying the spikes;
- deploy them only on the authority of the pursuit controller;
- identify and establish communication with the lead pursuit vehicle and find out:
 - the number of vehicles involved, and the location, direction and speed of the pursuit;
 - the target vehicle's description, whether weapons are involved, and other risk factors;
 - the target vehicle's lane.

74. The policy further states that a tyre deflation device must not be deployed on vehicles travelling at more than 100kph, motorcycles and heavy vehicles.

75. The lead pursuit driver must identify and establish communication with the deploying officer and;

- inform him of the matters contained in paragraph 73 above; and
- keep the deploying officer informed of the target vehicle's speed.

76. The site chosen to deploy the spikes must (amongst other things):

- provide a clear view of the road in each direction;
- offer enough visibility in all directions to allow you to observe the suspect vehicle and other traffic as they approach;
- provide cover for the deploying officer, rather than simple concealment.

77. In relation to deployment sites, the policy contains a warning: "**Caution: Do not deploy a device from a centre median on a multi-lane road.**" [Bold is Police emphasis].



The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

THE AUTHORITY'S ROLE

78. Under the Act, the Authority's functions, when notified of an incident pursuant to section 13, are to:
- investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
79. The Authority's role on completion of an investigation is to determine whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable.

THE AUTHORITY'S INVESTIGATION

80. The Authority's investigation considered the following issues:

80.1 whether or not Police complied with the pursuit policy in relation to the:

- commencement of the pursuit;
- communication by pursuing officers; and
- speed and manner of driving.

80.2 Whether or not Police complied with the pursuit policy in relation to the assessment of risk factors and the orders to abandon, specifically in relation to:

- the first order to abandon;
- the second order to abandon; and
- when the Fairlane caught fire.

80.3 Whether or not Police complied with policy in relation to use of Stinger road spikes, specifically in relation to:

- the decision to use spikes;
- selection of the deployment site; and
- the actual deployment.



The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

COMMENCEMENT OF PURSUIT

81. Officer A and the dog van were appropriately classified to conduct pursuits under the Police Professional Driver Programme.
82. Officer A initiated the pursuit because he was suspicious about the Fairlane and because Mr Heta accelerated away as soon as Officer A drove his vehicle closer (see paragraphs 4 and 5).
83. Officer A carried out the required risk assessment at the commencement of the pursuit and concluded that the immediate need to apprehend the offender outweighed the risks involved in continuing the pursuit.

FINDING

Officer A was legally justified and within policy in commencing the pursuit when Mr Heta accelerated away and failed to stop when signalled to do so.

COMMUNICATION BY THE PURSUING OFFICERS

84. Initially Officer A provided commentary to NorthComms. He provided detail on all aspects of the pursuit including risk factors (see paragraphs 7 and 9).
85. At 3:50:22am, approximately two and a half minutes into the pursuit, Officer A asked another patrol to take over the commentary so that he could concentrate on driving. At 3:50:52am Officer E, the passenger in a marked patrol car being driven by Officer D, took over the commentary.
86. Despite his request, Officer A continued to provide significant amounts of commentary throughout the pursuit.

87. NorthComms gave the pursuit warning (see paragraph 60) to Officer A at the commencement of the pursuit, and to Officers D and E once they were directed to take over communications.
88. Issues relating to communication by the pursuing officers in connection with the orders to abandon and the use of spikes are discussed in paragraphs 94 - 123.

FINDING

Police complied with the pursuit policy in respect of communications up to the point where abandonment became an issue.

SPEED AND MANNER OF DRIVING

89. Officer A activated his warning lights but not his siren when he commenced the pursuit. It is clear from the audio recording of the pursuit, that Officer A did not ever activate his siren.
90. The Land Transport Act does not require an enforcement officer to activate his siren when requiring the driver of another vehicle to stop. Activating the red and blue lights is sufficient (see paragraph 55). However Police pursuit policy does require the pursuing driver to activate warning devices (lights and sirens) – see paragraph 62.
91. The speed of the pursuit, as reported by Officer A and Officer E, was between 110kph and 135kph prior to the Fairlane driving over the spikes and striking Officer C. Following the collision, the reported speed varied between 60kph and 100kph. The predominant speed limit throughout was 50kph.
92. At approximately 3.52:20pm (four minutes and 22 seconds after the pursuit commenced), Officer E advised NorthComms: “*Manner of driving is still good, speed is 115.*” The pursuit controller, who later stated that he heard the reported speed as 150kph rather than 115kph, immediately ordered abandonment of the pursuit.
93. Issues relating to Officer A’s manner of driving in connection with the orders to abandon pursuit and his actions following the collision with Officer C are discussed in paragraphs 94 - 107.

FINDING

Officer A should have activated his siren.

The speed of the pursuit and manner of driving of Officer A appears to have been within policy.

ABANDONMENT**First order to abandon**

94. The first order to abandon pursuit was made by the dispatcher, following instructions from the pursuit controller, at 3.52:27am (see paragraph 11).
95. Officer A did not acknowledge or comply with this order. Instead he radioed NorthComms to clarify that the speed they had heard was 115kph rather than 150kph.
96. Officers D and E followed the abandonment procedures (see paragraphs 12 and 68).
97. The pursuit controller did not reiterate the order to abandon or give specific approval for the pursuit to recommence. When questioned about this aspect of the pursuit, the pursuit controller said:

“Normally I would never allow units to continue with a pursuit after it had been abandoned. I actually don’t remember why I haven’t told them to continue with it and that I misunderstood the speed, yeah but they have anyway.”
98. Instead the dispatcher, on advice from the pursuit controller, asked Officer E for the speed and manner of driving. Officer E advised that: *“Comms we have had to catch up now and speed is 112 and manner of driving is good at this stage.”* In the circumstances, the pursuit controller had tacitly authorised the continuation of the pursuit.
99. Under the pursuit policy, following the direction to abandon, Officer A required approval from the pursuit controller before recommencing. The policy states that recommencement will only be considered if the situation (and therefore the risk assessment) has changed following abandonment. Officer A did not receive approval to recommence the pursuit and the pursuit controller did not take charge of the situation.
100. Once the speed had been clarified as being 115kph not 150kph, the correct process would have been for the pursuit controller to give express permission to recommence the pursuit.

FINDINGS

Officer A's continuation of the pursuit was contrary to policy.

The pursuit controller did not take effective command and control of the situation.

Second order to abandon

101. The second order to abandon was made by the dispatcher, on the instruction of the pursuit controller, at approximately 3.54:58am, and it was repeated at 3.55:08am and 3.55:14am, (see paragraphs 28 and 30).
102. Officer A acknowledged this order on the third occasion, but did not then follow the abandonment procedure. He kept pursuing and sought authority from Officer G (the field duty senior sergeant) to continue.
103. Officer A later gave three reasons for not obeying the order to abandon; that the offender had deliberately run an officer down, that he could not identify the offender, and that other officers were assisting Officer C (see paragraph 32).
104. Over a minute later, Officer G requested permission from the pursuit controller for Officer A to continue the pursuit. In that time NorthComms did not reinforce the abandonment order or give any other instruction regarding continuation or recommencement of the pursuit.
105. Over two minutes after the first order to abandon, the pursuit controller gave Officer A permission to continue to pursue.
106. The pursuit controller said that this delay was primarily caused by him having to brief a second dispatcher and instruct that dispatcher to liaise with Ambulance, as the first dispatcher was fully occupied in dealing with the on-going situation. Once the second dispatcher had been briefed, he turned his mind to the question of abandonment or recommencement.
107. With regard to Officer A querying the order to abandon, the pursuit controller said that once he knew there were sufficient Police looking after Officer C, due to the gravity of the situation (purposely running down an officer), he was happy for the pursuit to continue.

FINDINGS

Officer A again did not comply with pursuit policy and failed to follow a direct order.

During this time, the pursuit continued to be not under adequate control.

Should the pursuit have been abandoned when the Fairlane caught fire?

108. At approximately 4.00:56am, Officer A reported: *“The vehicle is now on fire Comms, at the back, the vehicle is on fire, get Fire heading our way.”*
109. NorthComms did not ask Officer A for further details about this fire, nor was there an assessment as to whether the risks to the safety of the public, Police and the Fairlane occupants now outweighed the *“immediate need to apprehend”*.

FINDINGS

Both NorthComms and Officer A should have carried out risk assessments on the changed circumstances.

NorthComms should have conveyed a clear decision as to whether the pursuit should continue.

THE USE OF STINGER SPIKES

Was the decision to use spikes to try and stop the Fairlane reasonable in the circumstances?

110. The manner in which Sheean Heta was driving the Fairlane created a high risk to other road users.
111. Police had a duty to try to stop the Fairlane safely and it was desirable to do so before it reached State Highway 1.

FINDING

Since Mr Heta had repeatedly failed to stop and was driving in a dangerous manner, the use of spikes to try to stop him was a reasonable option.

Did Police comply with policy in relation to the location of the deployment site?

112. As explained in paragraph 76, spikes may only be used at sites where there is a clear view of the road in each direction, enough visibility for the officer to see the suspect vehicle and other traffic as they approach, and cover (not just concealment) for the officer.
113. Officers B and C chose to position the spikes in the intersection of Esmonde Road and Fred Thomas Drive. Esmonde Road is a major ‘feeder’ road onto the southern motorway

114. When interviewed, the pursuit controller said that he did not direct Officer C to lay spikes, but was aware of what the officers were doing and was “quite happy” about the chosen location.
115. However, later in interview, when told that the location chosen was close to Fred Thomas Drive, rather than on the two lane section of Esmonde Road, the pursuit controller said: “No I wasn’t aware that that was where they were putting them.”
116. When questioned about the location of the spikes, Officer A said:
- “I was advised that they were setting up spikes on Esmonde Road, which I would have believed would have been in the dual carriageway on Esmonde Road so I was quite surprised that they were set up on the section of road four lanes wide.”*
117. In order to position the spikes, Officer C stood one lane into the five lane highway. This location provided no cover or concealment for him, and was contrary to policy. He was not wearing a reflectorised safety jacket as required by policy.
118. Officer A said that when he was approaching the spike deployment location, he saw a person in dark clothing. He said: “I couldn’t tell if it was a Police officer, there was no reflectorised jacket on.” In relation to the placing of the spikes, Officer A stated that the driver of the Fairlane had ample room to go to the left, saying “There was at least two lanes clear with no spikes. You could easily do a U-turn there without any trouble at all.”

FINDINGS

The location chosen by Officers B and C was unsuitable and in breach of policy. It placed Officer C in a situation of extreme risk.

The pursuit controller failed to communicate with Officer C regarding the deployment location.

Did Police comply with policy in relation to the deployment of spikes?

119. Under the policy:
- 1) The pursuit controller must supervise and monitor the officers involved in deploying the spikes, maintain communication with the deploying officer and regularly question the deploying officer about road and traffic conditions (see paragraph 72).
 - 2) The deploying officer must be trained in deploying the spikes, deploy them only on the authority of the pursuit controller, establish communication with the lead pursuit vehicle to find out (amongst other things) the speed of the pursuit, the target vehicles lane and other risk factors (see paragraph 73).

3) The lead pursuit driver must identify and establish communication with the deploying officer and inform him or her of the matters contained in 2 above, and keep the deploying officer informed of the target vehicle's speed (see paragraph 75).

120. The policy further states that spikes cannot be deployed if the speed of the fleeing car is over 100kph (see paragraph 74).

121. In this pursuit:

- The pursuit controller had no contact with Officers B or C over the deployment of the spikes or the speed of the pursuit.
- Officer C had been trained in deploying stinger spikes. However he had never deployed them operationally.
- There was no direct communication between the pursuing patrols and Officer C in relation to speed. About one and a half minutes before the collision, Officer E had made a radio transmission reporting the Fairlane's speed at 112kph. All speed reports given by Officers A and E, up to the collision, were over the prescribed maximum speed of 100kph.
- There was no direct communication between the pursuing patrols and Officer C in relation to other risk factors, such as Mr Heta turning the Fairlane's lights on and off and weaving across lanes.
- The Fairlane had slowed down prior to reaching the deployment site and was estimated to have been travelling at a maximum speed of 62.2kph at the time of impact (see paragraph 38). However, that was not known to Officer C or the pursuit controller.

122. Officer C had a responsibility to seek information about the Fairlane's speed before using the spikes, and the pursuit controller had a responsibility for ensuring that there was communication between Officer C and Officers A and E in relation to all risk factors, but primarily in relation to speed.

123. Once the pursuit controller knew that the Fairlane was on Esmonde Road, heading towards Officer C, he should have made a clear decision on the use of spikes. Given the last reported speed of the pursuit was 112kph, the pursuit controller should have requested an updated speed assessment, or directed Officer C not to deploy spikes.

124. The Authority accepts that this was a fast moving pursuit and that there were time constraints that affected how the deployment of the spikes was controlled. However Police policy is clear on the responsibilities of the pursuit controller, deploying officer and lead pursuit driver in relation to the use of spikes (see paragraphs 72 - 77).

FINDINGS

The pursuit controller breached policy by permitting the use of spikes on a vehicle reported to be travelling at more than 100kph.

The pursuit controller also breached policy by not adequately monitoring communications between Officer C, the lead pursuit vehicles (Officers A and E) and NorthComms, primarily in relation to speed.

Officer C breached policy by not seeking information about the Fairlane's speed and by not wearing a reflectorised jacket.



Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

125. This pursuit was initiated by Officer A, on his (correct) assessment that the occupants of the Fairlane were involved in illegal activity.
126. It quickly escalated. The pursued vehicle was driven at speed and in a dangerous manner by a driver who demonstrated that he was prepared to take any risk to avoid being caught.
127. Whilst the determination of the officers involved to apprehend the occupants of the Fairlane is understandable, the outcome of their uncoordinated actions was serious bodily harm to Officer C.
128. There were several significant breaches of Police policy. In particular – on two occasions, contrary to direct instructions, the pursuit was not abandoned; and important rules governing the use of road spikes were disregarded.
129. In terms of section 27(1) of the Act (see paragraphs 78 and 79), the Authority has formed the opinion that:
 - Officer A's failures to comply with instructions to abandon the pursuit were unjustified;
 - Officers B and C's failure to position and deploy road spikes according to policy was undesirable;
 - the pursuit controller's failure to take firm command and control of the situation was undesirable.
130. The Authority makes no recommendations to the Commissioner of Police pursuant to section 27(2) of the Act, on the basis that:
 - Police have advised the Authority that the failures of Officers A, B, C and the pursuit controller will be addressed as performance issues and refresher training given where appropriate; and

- Police have recommended that a refresher training package for the stinger spike system be written and mandated as part of the Police Professional Driver Programme.



Hon Justice L P Goddard

Chair

Independent Police Conduct Authority

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