

Investigation into Police conduct prior to fleeing driver crash that killed Zara Mitchell

- 1. Shortly after 2am on 17 September 2023 a Ford Falcon containing four people was stopped by a Police patrol in Christchurch. The officers discovered the driver (Mr X) was in breach of his learner driver's licence and the vehicle was not roadworthy so they issued a pink sticker¹ and instructed Mr X to drive directly to his father's address.
- 2. Mr X did not comply with this instruction and drove around Christchurch before heading to Rangiora to meet a large group of car enthusiasts to conduct "burnouts". This activity caused a number of local residents to call Police complaining about the noise and behaviour.
- 3. By the time a Police patrol arrived in the area, most of the car enthusiasts had gone but for three, including Mr X and his friends. After the Police patrol drove slowly past, the Falcon did a U turn and accelerated away towards Rangiora.
- 4. The Police patrol activated its blue and red lights but was unable to catch up to the Falcon. After losing sight of it, the patrol abandoned the pursuit.
- 5. The Falcon continued to drive at speed and, as it entered Rangiora, crashed into a tree on a residential property, killing Ms Mitchell in the back seat.
- 6. Police notified us of the incident and we conducted an independent investigation.

¹ A notice ordering an unsafe vehicle off the road.

The Authority's Findings

Issue 1: Was it reasonable for Officer C to allow Mr X to drive to his father's address after he had breached the conditions of his learner driver's licence?

It was lawful and reasonable for Officer C to allow Mr X to drive to his father's address after breaching the conditions of his learner driver's licence.

Issue 2: Did Officers A and B comply with the Police Fleeing Driver Policy when they pursued Mr X?

Officer B should have notified the Southern Emergency Communications Centre (ECC) of their reason and intention to signal Mr X to stop before activating their lights and siren.

After abandoning the pursuit Officer A should have fully deactivated their lights and siren and come to a complete stop as required by Police policy.

Officer B should not have advised ECC that they had stopped on Acacia Ave. This comment was careless and misleading.

Issue 3: Were Police actions a material cause of the crash?

Officer A and B's actions did not cause the crash.

Analysis of the Issues

ISSUE 1: WAS IT REASONABLE FOR OFFICER C TO ALLOW MR X TO DRIVE TO HIS FATHER'S ADDRESS AFTER BREACHING THE CONDITIONS OF HIS LEARNER DRIVER'S LICENCE?

What were the circumstances in which Officer C made the decision to allow Mr X to drive to his father's address?

- 7. At 2.18am on 17 September, Officers C and D were on patrol in Christchurch when they saw a Ford Falcon travelling slowly along Carmen Road. The vehicle did not look roadworthy, so they activated their blue and red lights and signalled it to stop. The vehicle was being driven by 18-year-old Mr X, with three passengers. The front seat passenger was the owner of the car. The passenger in the left rear seat was Ms Mitchell, also aged 18 years.
- 8. Officer C obtained Mr X's details and established that he was on a learner's licence. The vehicle was not displaying learner licence plates and none of the passengers were licensed drivers. On inspection under the bonnet the officers were unable to locate a Vehicle Identification Number (VIN) but did find one near the driver's door that came back to a different vehicle which had a non-operating order assigned to it.
- 9. Officer C suspected that the Falcon had been pieced together with parts from other vehicles and she discussed these concerns with Mr X and the owner, who was the front seat passenger. They

- explained they had only acquired the Falcon from a friend earlier in the evening and said they genuinely did not realise the problems associated with it.
- 10. Officer C directed Officer D to complete a pink sticker notice for the vehicle because she did not believe it was roadworthy. She asked the occupants where they were driving to, and they indicated an address in Pages Road. However, Officer C did not want the vehicle driven that far. Instead, at Mr X's suggestion, Officer C agreed the vehicle could be driven to his father's address a short distance away. Officer C told Mr X she and Officer D would follow them home.
- 11. Officer D told Mr X the vehicle could not be driven more than 50 kph via the most direct route to his father's address. Officer C believed these conditions mitigated any risk associated with the vehicle's roadworthiness. These conditions were also clearly stipulated on the pink sticker notice.
- 12. Officer C explained the consequences of breaching the pink sticker conditions and discussed how to later transport the vehicle for repairs. Officer C then took some photographs of the Falcon and advised Mr X that she would be issuing him with an infringement notice. Officer C also conducted a breath test on Mr X, which he passed.
- 13. Officer C then heard a transmission over the Police radio of a burglary in progress at a Liquorland outlet in Lincoln and decided that she and Officer D should attend. She says she wanted to oversee the response to this job and ensure her staff had adequate supervision should they encounter a vehicle leaving the scene.
- 14. Officer C told Mr X that they were responding to another job and directed him to drive straight to his father's address in accordance with the instructions on the pink sticker. Officers C and D then made their way under flashing lights to Lincoln.
- 15. Mr X did not comply with the directions given to him by Officer C. He did not drive directly to his father's address but instead continued driving around Christchurch with his passengers and then to the intersection of Swannanoa and Oxford Roads in Rangiora.

What options did the officers have?

16. Section 121A(2) of the Land Transport Act 1998 provides enforcement officers with a number of options for dealing with breaches of certain driver licence conditions. It states:

"The enforcement officer may -

- a. forbid the person to drive a motor vehicle until that person is able to comply with the conditions of that person's learner licence or restricted licence:
- b. direct the person to drive to a specified place (for example, the person's home):
- c. take possession of all ignition or other keys of the vehicle, and for that purpose require the person to deliver up immediately all such keys:
- d. take any steps that may be necessary to make the motor vehicle immobile or to move the motor vehicle to a place where it does not constitute a traffic hazard".

What does Officer C say about the reason for her decision?

- 17. Officer C says it was her initial intention to escort Mr X home, which is common practice. However, her thinking changed when she learnt of the burglary in progress. She says that, although she was aware Mr X was in breach of his licence, she considered it unlikely he would encounter other motorists given the time of night and she thought the risk was minimal due to the short distance to his father's address.
- 18. Officer C said Mr X was polite and cooperative and appeared to "take on board" the directions she gave him. She says she had no reason to suspect he would not comply with them. She said she also considered other options such as leaving the vehicle on the side of the road but was aware this would leave four people stranded in the middle of the night and the vehicle could be stolen.
- 19. Officer C said she made a judgement call as the supervisor that evening, knowing her staff coverage for Selwyn that night was light and she trusted that Mr X would follow her directions.

Was Officer C's decision a reasonable one?

- 20. Officers C and D acted lawfully and in accordance with the Land Transport Act 1998 in signalling Mr X to stop. They quickly confirmed that Mr X was in breach of his licence conditions and the vehicle was not roadworthy. The pink sticker that was issued included a direction to drive straight to Mr X's father's address at a speed not exceeding 50 kph, which was reinforced verbally by Officer C.
- 21. It was only the incoming report of the burglary in progress that diverted Officers C and D away from Mr X and his passengers. We have confirmed details of the burglary and the officers' response to it.
- 22. We are satisfied that Officer C gave due consideration to the potential risks in allowing Mr X to drive and deciding to attend the burglary. Mr X had been cooperative with the officers, and it was only a short distance and at slow speed that he was directed to travel. After being issued the notice he was also breath tested for alcohol.
- 23. We find it was reasonable that Officers C and D diverted to attend the burglary. This was a decision Officer C made as the supervising officer on shift. She used her discretion in making this decision, which was lawful under the Land Transport Act 1998.

FINDING ON ISSUE 1

It was lawful and reasonable for Officer C to allow Mr X to drive to his father's address after breaching the conditions of his learner drivers licence.

ISSUE 2: DID OFFICERS A AND B COMPLY WITH THE POLICE FLEEING DRIVER POLICY WHEN THEY PURSUED MR X?

24. Here we consider whether the circumstances constitute a pursuit, and whether Officers A and B complied with the relevant Police policy.

How did the situation unfold?

- 25. Officers A and B were working as the Rangiora night shift patrol. Officer A was driving. At approximately 4.25am they were dispatched to the intersection of Swannanoa and Oxford Roads following complaints from members of the public. This intersection is in a rural area approximately three kilometres from the Rangiora township.² The complaints included that a large group of car enthusiasts (sometimes referred to as 'boy racers') were drinking alcohol, conducting skids, and setting off fireworks.
- 26. As they drove out of Rangiora, several of the car enthusiasts passed them heading back into the township. Not knowing how many remained at the Swannanoa intersection, they called the Rangiora sergeant for assistance and arranged to meet him there.
- 27. When they arrived at the intersection, only three cars remained. They were parked on the side of the road, with the Ford Falcon in which Mr X had formerly been stopped, parked behind the other two. Officers A and B decided they would speak with the occupants of the Falcon, but first they drove slowly around the immediate area to check if any other cars were present.
- 28. Officers A and B drove slowly past the Falcon and saw it was hoisted up on a jack and a group of people appeared to be changing a tyre. Officer B conducted a check on the registration plate and learnt it had been issued with the pink sticker earlier that morning. On learning this, Officer B called his sergeant and said:
 - "... when you get up here to the school there's a silver Ford Falcon with a blue bumper DGK on the number plate just ignore that one and make him think you're not interested in him because he's actually pink stickered so when he moves you can grab that vehicle".

This transmission indicates to us a clear intention at that time to stop the Falcon once it had become mobile.

- 29. Officers A and B pulled to the left ahead of the Falcon. As they turned around, they saw the Falcon had done the same and was accelerating along Oxford Road in the direction of the Rangiora township.
- 30. Officers A and B activated their red and blue lights and accelerated in order to signal the Falcon to stop. It was their intention to breath test the driver and establish why the vehicle was on the road after being pink stickered. At this time, their sergeant was heading towards them on Oxford Road.

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² See appendix for map.

- 31. As Officers A and B were attempting to catch up with the Falcon, Officer B called their sergeant on the radio and told him that the Falcon was heading towards him and had failed to stop for them. This transmission was overheard by the Southern Emergency Communications Centre (ECC) who then queried the reason for the pursuit, to which Officer B replied "suspected EBA".3
- 32. Owing to the speed the Falcon was traveling, Officers A and B were unable to catch up with it. They soon lost sight of it completely and assumed it had turned into a side road.
- 33. With the Falcon out of sight they slowed down. This was also followed by a direction from ECC to abandon the pursuit, and Officer B acknowledged they had. It is clear that until this point Officers A and B were conducting a pursuit.
- 34. At this time Officers A and B had reached the 50 kph zone entering Rangiora and they turned right into Acacia Avenue (a side road off Oxford Road), suspecting the Falcon may have turned there. They were unaware the Falcon had in fact continued on Oxford Road and crashed into a tree at the next intersection (McIvor Place).
- 35. Shortly after, they were advised of the crash and drove to the accident scene. They found Mr X and his passengers distressed outside of the Falcon. Ms Mitchell died at the scene.

What is the Police policy on fleeing drivers?

36. Under the Police Fleeing Driver Policy, a fleeing driver is a driver who has been signalled to stop by an enforcement officer but fails to stop or fails to remain stopped. The Policy states that in deciding whether to stop a driver:

'...consideration should always be given to delaying the signal to stop while coordinating tactical options or waiting for the wider environment to become safer to reduce risk.'

- 37. Police policy also states that if available information indicates that a driver is likely to flee, the ECC must be advised of:
 - the reason for wanting to stop the driver;
 - the intention to signal the driver to stop; and
 - whether a pursuit is going to be initiated if the driver fails to stop.
- 38. A pursuit must be abandoned if the officer determines that the risk of the pursuit outweighs the necessity to continue the pursuit.

³ Police jargon for a suspected drink driver.

"Once the decision to abandon the pursuit has been made, all units involved must:

- immediately reduce speed to increase the distance between the fleeing driver and their own vehicle
- deactivate warning devices once below the posted speed limit
- stop as soon as it is safe to do so. If stopping in an area such as a motorway, safety may necessitate that warning lights remain activated until their vehicle is mobile again
- advise the ECC they are stationary and state their specific location
- consider options on how to hold offending driver to account...."

Are officer and witness accounts consistent?

39. Here we consider what the officers and occupants of the car say, in order to establish whether the officers pursued the car, and if so, whether they complied with Police policy in doing so.

What does Officer A say?

40. Officer A told us that, prior to activating the lights, there had been no discussion between her and Officer B about what they would do if the Falcon failed to stop. She says, however, that she was never going to pursue it if it failed to stop:

"In my mind I was never going to chase it. It was a pink sticker, we had the registration, at that point it was just going to be a routine $3T^4$. I was happy to try and catch up to it at this point, and obviously when I couldn't see it in the distance I braked".

- 41. Officer A says this was not a situation that justified a pursuit but one which could be followed up later with enquiries, hence the decision to abort the attempt to catch it.
- 42. Officer A recalls seeing her speed had reached 120 kph when she drove past the Plaskett Road intersection but says by the time they approached Lehmans Road (a distance of about 2.5km from the Swannanoa intersection) where there is a change of speed sign, she had already slowed down sufficiently to look left and right for signs of the Falcon's taillights.

What does Officer B say?

- 43. Officer B also says there was no discussion with Officer A about whether to pursue the Falcon if it failed to stop or whether to activate the blue and red flashing lights: "...I guess it was always the assumption to 3T and light up the car, because that's how you stop a car I guess ...".
- 44. This comment by Officer B is consistent with the radio call he made to his sergeant (see paragraph 28) of their intention to stop the Falcon once it had become mobile. However, when

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⁴ A vehicle stop.

- we asked Officer B about this he said that his and Officer A's intention was to speak with the occupants of the Falcon whether or not it was stationary, or mobile.
- 45. Our assessment is that Officer B's radio call to his sergeant was made with the intention that the Falcon is stopped *after* it becomes mobile. After making that call and while driving slowly around the area, Officers A and B had the opportunity to speak with the occupants of the Falcon while they were still on the roadside. That opportunity was lost when Officers A and B made their turn, to find the Falcon had done the same and was speeding away. Officer B estimates the closest they got to the Falcon was 50 metres when they first started trying to catch up to it, but it continued to accelerate away until it was out of sight.
- 46. Officer B acknowledges that under the Police Fleeing Driver Policy he should have alerted the ECC immediately when the Falcon failed to stop. When asked why he didn't, he said his priority was to advise his sergeant that the Falcon was heading his way because the sergeant was the only other unit around to assist them. Whilst we acknowledge Officer B's rationale for this, in our view he should have advised ECC *before* attempting to stop the Falcon, in anticipation that Mr X was likely to flee.
- 47. With the benefit of hindsight, Officer B acknowledged that he and Officer A should have just pulled over and let the Falcon go, rather than try to catch up with it.
- 48. Officer B confirmed that Officer A slowed down when they abandoned the pursuit but did not come to a stop as required under policy (despite him saying on the radio they had come to a stop on Acacia Ave).
- 49. Officer B says once they had slowed down after losing sight of the Falcon, he thought he saw a vehicle in the distance turn right into a side street. This can be heard in his radio transmission to ECC: "...he [Mr X] was last seen going south on Acacia Drive..."
- 50. Officer B told us:

"....we were still moving forward at a slow speed and it was at that time where the vehicle off in the distance was, I'd lost observation on the vehicle, but I saw something go, maybe go to the right which I assume was the vehicle going down Acacia and we still, we just continued moving forward and it was, the vehicle was well beyond,like it was gone".

51. Officer B told Officer A what he had seen so they turned into Acacia Ave to search for the Falcon, unaware it had continued on Oxford Road and had already crashed.

What does Mr X say?

52. Mr X confirmed the description of the 'car meets' described by the officers. ⁵ He says the Police car drove very slowly around the area, at about walking pace, passing the Falcon three times. He believed Officers A and B were probably waiting for them to drive off, having checked their number plate and becoming aware of the pink sticker.

⁵ A colloquial term to describe the meeting of car enthusiasts who perform burnouts and skids.

- 53. He says that, after the Police car passed them a third time, his front seat passenger threw him the car keys and he and his friends jumped into the Falcon. He says that he then did a U turn and his friends began screaming at him to 'go!' so he "gassed it out of there" along Oxford Road in the direction of Rangiora.
- 54. About 100 metres from the intersection, Mr X saw the Police patrol's blue and red flashing lights in the distance behind him and he asked his friends what he should do. They were slapping the back of his seat screaming at him to 'go' so he "....just floored it I took off out of there like my hair was on fire..."
- 55. At some point Mr X turned off his lights and the Police car never caught up to him. He says as he neared Plaskett Road (or Lehmans Road he wasn't sure), he looked behind and could no longer see the Police patrol or its flashing lights, so he assumed they were no longer being pursued. He slowed down, but his friends 'screamed' at him to continue so "...I put my foot to the floor again..." and entered Rangiora.
- 56. As the Falcon entered the residential zone, Mr X lost control and crashed. Mr X described to us what happened. The crash was also captured by CCTV footage which is described below.

What do Mr X's passengers say?

57. One of Mr X's passengers (Mr Y) was seated in the rear of the Falcon beside Ms Mitchell. The other (Mr Z) was seated in the front passenger's seat. We interviewed both of them. Mr Y thought the Falcon reached speeds of around 200 kph as it sped away from Officers A and B. He also confirmed the Police car was not in sight at the time of the crash. Mr Z says he last saw the Police car behind them when they were accelerating away from the Swannaroa intersection. He next saw them when they arrived at the crash site "a couple of minutes" after the crash.

Did Officers A and B pursue the car, and were they justified in doing so?

58. A pursuit occurs when:

- a) A driver indicates by their actions and/or by continuing their manner of driving that they have no intention of stopping following a direction to do so; and
- b) The enforcement officer decides to continue to follow behind the vehicle with a view to reporting on its progress or stopping it.
- 59. Officer A says they were never going to pursue the car if it failed to stop but would try to 'catch-up' to it (paragraphs 40- 41). Despite this stated absence of intention, it is clear that an attempt to catch up to a car after it has failed to stop when signalled to do so is, in fact, a pursuit. Officer A acknowledges that a pursuit was not justified in these circumstances, as the officers could have made enquiries afterwards to locate the offenders (paragraph 41).
- 60. Even though Officer A did not intend to pursue the car and did not think they were justified in doing so, the officers' action nonetheless constituted a pursuit up to the point they turned into

Acacia Avenue. We acknowledge, however, that they soon recognised the need to abandon the pursuit.

Did Officers A and B comply with the Fleeing Driver Policy?

- 61. Officer B did not notify the ECC of their reason and intention to signal Mr X to stop. This was in breach of policy set out at paragraph 37.
- 62. Further, there are two discrepancies in the accounts of Officers A and B that are addressed here.
- 63. Officer A said in her Police interview that she deactivated her flashing lights when they abandoned the pursuit. However, CCTV footage shows the flashing lights are still activated when they turn into Acacia Ave.
- 64. When we put this contradiction to Officer A she said she was very surprised. She explained that the patrol car lights and siren are controlled by a single rotation switch. Rotating the switch to the right activates the flashing lights and a further click to the right activates the siren. Officer A suspects that she may have clicked the switch once to the left to deactivate the siren and failed to complete two further clicks to deactivate the lights.
- 65. Given the pursuit had been abandoned and the patrol car had slowed down, the need to keep them activated had diminished. For that reason we accept Officer A's explanation that her failure to deactivate them was inadvertent. At most she was careless, putting Police in breach of the Fleeing Driver Policy.
- 66. Officer B says in a radio transmission to ECC that they had come to a stop on Acacia Ave. The CCTV footage shows otherwise. When we put this to Officer B he confirmed the patrol car did not stop on Acacia Ave. He said that when ECC asked if they had stopped he was aware that Acacia Ave was the nearest intersection to them, so he selected that intersection saying they had stopped there. Officer B acknowledges this transmission was wrong but denies any intention to mislead. However, this error was careless at best and misled ECC to believe the patrol car had stopped. Failing to stop was also a breach of the Fleeing Driver Policy.
- 67. Despite these breaches of policy, we are satisfied that Officers A and B had abandoned the pursuit at the time of the crash.

FINDINGS ON ISSUE 2

Officer B should have notified ECC of their reason and intention to signal Mr X to stop before activating their lights and siren.

After abandoning the pursuit Officer A should have fully deactivated their lights and siren and come to a complete stop as required by Police policy.

Officer B should not have advised ECC that they had stopped on Acacia Ave. This comment was careless and misleading.

68. Two aspects of the CCTV footage establish what lead up to the crash. Both give a clear indication of the speed of the Falcon before it crashed, and Officer A and B's distance behind.

What does footage from a business premises show?

- 69. This footage is located on Oxford Street almost directly across from Acacia Ave. It shows the Falcon driving past at very high speed. Twenty-four seconds later Officer A and B's patrol car comes into frame and turns right into Acacia Ave. It appears to be travelling within the posted speed limit (50 kph) and its blue and red lights are still activated. It continues along Acacia Ave.
- 70. The footage, as it relates to speeds and distances, is consistent with the accounts of Officers A and B who said they had lost sight of the Falcon. It is also consistent with Mr X's narrative of events. He said he had lost sight of the patrol car and did not think he was being pursued at the time that he crashed.

What does footage from a residential dwelling show?

- 71. This footage records the moments immediately before the crash. Officer A and B's siren can be heard in the background. The Falcon is seen to pass the address at very high speed. It is here that the Falcon loses control and crashes on the corner of McIvor Place. About two seconds after the crash the Police siren is deactivated but the patrol car is not in sight.
- 72. Twenty-six seconds later Officer A and B's patrol car comes into frame. It has its blue and red lights activated and is not speeding. It turns right into Acacia Ave as described above.

How fast was Mr X travelling?

- 73. The Police Serious Crash Unit investigated the crash and found excessive speed and Mr X's inexperience and poor judgement were the causes of the crash.
- 74. The crash investigator calculated that as Mr X entered the residential 50 kph zone his speed was between 167 and 178 kph, and at the point Mr X lost control and crashed, his speed was between 143 and 147 kph.

Analysis

- 75. It is clear that Mr X and his friends were intent on leaving the Swannanoa intersection at high speed before Officers A and B activated their flashing lights. This is acknowledged by Mr X.
- 76. The evidence is that at no point did the patrol car get close to the Falcon. Indeed, Mr X increased his speed and distance to the extent that the vehicles lost sight of each other.
- 77. We are satisfied that Officers A and B aborted their attempt to catch up to the Falcon. Although the exact location is unclear, this appears to have been as the they neared or entered the 50 kph residential zone.

- 78. Mr X continued driving at very high speeds, despite believing Officers A and B had abandoned the pursuit.
- 79. We are satisfied that Mr X and his friends were intent on speeding away from Police, whether they thought they were being pursued or not.
- 80. Whilst Officers A and B breached the Fleeing Driver Policy as described above, we do not consider their actions were a material cause of the crash. We agree with the conclusion reached by Police that Mr X's skill level coupled with excessive speed were the cause of the crash, and that neither of these were bought about by Police actions.

FINDING ON ISSUE 3

The actions of Officers A and B were not a material cause of the crash.

Judge Kenneth Johnston KC

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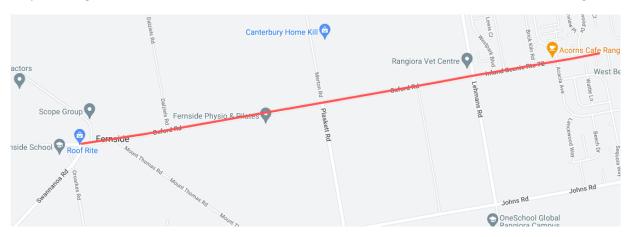
Chair Independent Police Conduct Authority

24 October 2024

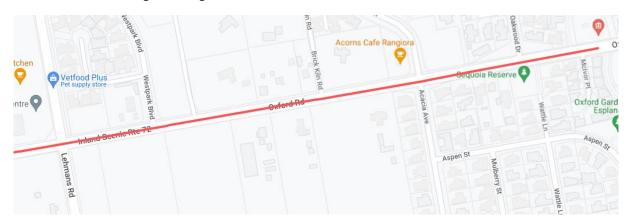
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APPENDIX

Map showing route from the intersection of Swannanoa and Oxford Roads to McIvor Place, Rangiora



Enhancement entering the Rangiora residential zone



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About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

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

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.