

# Allegation of assault following a pursuit in Palmerston North

## OUTLINE OF EVENTS

### Pursuit

1. At about 2.00am on Sunday 22 April 2018, Officer A signalled a Subaru station wagon to stop near the town centre of Palmerston North to check the driver's licence status and conduct a breath test.
2. The Subaru failed to stop and accelerated along Main Street (which becomes Pioneer Highway). Officer A commenced a pursuit.<sup>1</sup> The Subaru (which was stolen) drove on the wrong side of the road with the headlights turned off. On one occasion, an oncoming car had to take evasive action.
3. Officer A followed the Subaru onto Tremaine Avenue, where it drove over road spikes. Officer A received permission from the Central Communications Centre (CentComms) to attempt a blocking manoeuvre to bring the Subaru to a stop.
4. Before this could happen, the driver of the Subaru turned right down a side street, and forced his way past a stationary Police car.
5. Officer A followed the Subaru and used his Police car to push it off the road into a brick wall.

### Use of force

6. There were three teenagers in the Subaru. The front-seat and rear-seat passengers were arrested by Police.

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<sup>1</sup> Officer A is a Gold class driver, enabling him to engage in pursuits. At the time of this incident he had two and a half years' service with New Zealand Police.

7. According to Officer A, when the driver (Mr X, aged 14) got out he rushed at him with a weapon in his hand. Officer A attempted to pepper spray Mr X and, together with another officer, dragged Mr X to the ground and handcuffed him.
8. Mr X sustained facial injuries and bruising. He was taken to hospital for assessment and treatment, then returned to Police custody.
9. When Mr X appeared at court the next afternoon, his whānau, social worker and others were shocked at the extent of Mr X's visible injuries and his obvious discomfort. The Judge also commented on Mr X's injuries and asked if he had received medical attention. Mr X told his social worker that he had not threatened or resisted Police, who had kicked and punched him when arresting him.
10. The social worker raised concerns with Police, however Mr X declined to be formally interviewed about what had happened to him.
11. Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## THE AUTHORITY'S INVESTIGATION

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12. As part of its investigation, the Authority interviewed Officers A, B, C and D, the CentComms shift commander; and Mr X's social worker. The social worker asked Mr X whether he would be interviewed by the Authority, but he declined. The Authority also attempted to contact the other occupants of the Subaru but was unsuccessful. The Authority decided that it had sufficient information from the social worker's report to Police (which included an account of what Mr X said happened to him) to conduct the investigation without interviewing Mr X.
13. The Authority also visited the scene of the pursuit and arrest, and reviewed relevant Police documentation, although the Police investigation has yet to be concluded.
14. The Authority identified and considered the following issues:
  - 1) Did Police comply with policy when signalling the Subaru to stop, then pursuing it?
  - 2) Did Police comply with policy during the pursuit?
  - 3) Was the force used to arrest Mr X justified?
  - 4) Was Mr X provided with appropriate aftercare and medical attention?

## THE AUTHORITY'S FINDINGS

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### Issue 1: Did Police comply with policy when signalling the Subaru to stop, then pursuing it?

15. When managing fleeing driver events, Police are required to balance protecting community safety against their duty to apprehend those who fail to stop, and to enforce the law. The policy is set out in paragraphs 87-92.
16. Police use the TENR risk assessment methodology (set out in paragraphs 90-92 ) to continuously assess foreseeable and identified risks, and plan a response that prioritises public and Police safety. Both the threat posed by the fleeing driver and the risks of intervention must be actively managed.
17. The TENR risk assessment must be applied during four distinct phases of fleeing driver events: pre-initiation (before signalling a driver to stop); initiation (before deciding whether to pursue the fleeing vehicle); continuation (the duration of the pursuit) and abandonment.

#### *Pre-initiation*

18. Officer A was patrolling Palmerston North's town centre in his Police car when he saw a Subaru with three or four unidentified occupants. The Subaru was driving at normal speed, but due to the time of night and location, Officer A decided to stop it to check the driver's licence and carry out a breath alcohol test.
19. Police have the power to stop a car and speak to the driver under section 114 of the Land Transport Act 1998, provided that this is for the purpose of enforcing or administering the Act.
20. Officer A was required to carry out a risk assessment before signalling the Subaru to stop, considering the possibility that the driver of the Subaru would try to flee, and the level of risk that this might create.
21. This was a routine traffic stop, and Officer A had no specific reason to believe that the unidentified driver would not stop for him; or otherwise posed a specific threat. Officer A was justified in activating his emergency flashing lights and signalling the Subaru to stop.

#### *Initiating the pursuit*

22. Rather than stop, the driver (Mr X) accelerated along Main Street, to a speed of approximately 100kph in a 50kph posted speed zone. At this point, Main Street has two lanes running in each direction, separated by a grass median strip. It was a clear, dry night with very little traffic on the road.
23. Officer A was required to undertake another risk assessment before deciding whether to commence a pursuit. This risk assessment needed to weigh the risks of pursuing the Subaru against the immediate need to stop the vehicle and apprehend the driver. Officer A told the Authority that he did conduct an assessment at this point and that his risk assessment was continuous throughout the remainder of the pursuit.

24. The factors for and against commencing a pursuit were finely balanced. On the one hand, despite being a built-up area, the time of night meant that it was unlikely that other motorists or pedestrians would be put at risk by a pursuit. The road conditions were good and visibility was adequate, meaning that Officer A could drive at speed in relative safety. Factors weighing against the pursuit were the unknown proficiency of the driver, and the risk to multiple occupants of the Subaru if it crashed at speed. Officer A had no reason to suspect that the driver had committed any offence (beyond failing to stop) so the driver did not pose a significant known risk to the general public (other than by his manner of driving).
25. In such situations, the Authority prefers officers to adopt a risk-averse approach and decide against commencing a pursuit. This approach aligns with policy, which specifically states:
- Fleeing driver events will only be commenced and/or continued when the seriousness of the offence and the necessity for immediate apprehension outweigh the risk of pursuing.
  - The fact that a driver fails to stop when signalled does not in itself justify a pursuit.
  - An inquiry phase is preferred over a fleeing driver pursuit wherever possible and when circumstances allow.
26. However, because the risk factors were finely balanced in these circumstances, the Authority cannot criticise Officer A for deciding to commence the pursuit.

#### FINDINGS ON ISSUE 1

Officer A was justified in signalling the Subaru to stop.

Although a risk-averse approach is preferred, the Authority accepts that Officer A's decision to commence the pursuit was reasonable in these circumstances.

#### Issue 2: Did Police comply with policy during the pursuit?

27. The pursuit covered approximately 15 kilometres mainly around the outskirts of Palmerston North, and lasted approximately 11 minutes.
28. Officer A complied with policy by advising CentComms that he was commencing a pursuit of the Subaru; and providing his location and driver certification details. He acknowledged the pursuit warning and provided information about the road conditions and traffic, and the Subaru's direction of travel, manner of driving and speed.
29. Officer A was required to undertake a continuous risk assessment while in pursuit. This needed to include information he knew or strongly suspected (such as the number of people in the Subaru), and consideration of the way the Subaru was being driven.
30. Policy requires a pursuit to be abandoned if the need to immediately apprehend the fleeing driver is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of Police vehicles.

31. There were several points during the early stages of the pursuit when the manner of Mr X's driving created significant risk to himself, his passengers, and other road users; and Officer A should have abandoned the pursuit:
- While driving through well-lit residential streets with no other visible traffic, the Subaru crossed the centre line without headlights on.
  - A short time later on Pioneer Highway, while travelling at 150kph in a 100kph speed zone, Mr X crossed the centre line, with headlights turned off, into the path of an oncoming vehicle. This vehicle took evasive action, pulling onto the grass verge. The Subaru returned to the correct lane and its headlights were turned back on before passing this vehicle.
32. Officer A did not communicate these incidents to CentComms, which he should have done to allow the shift commander, who was in overall control of the pursuit, to undertake a separate risk assessment.<sup>2</sup>
33. Officer A said that he considered that he was justified in continuing the pursuit after the second incident because the fleeing driver was heading away from town onto "*deserted rural roads*," there was no other traffic that he could see, and he had now been advised by CentComms that the Subaru had been stolen.
34. The Authority does not agree with Officer A's assessment. Mr X's increasingly risky behaviour and disregard for the safety of his passengers and other road users, was plainly influenced by the presence of Police. The risks of continuing the pursuit clearly outweighed the need to apprehend Mr X and recover stolen property.

#### *Use of road spikes and moving block*

35. Officers B and C positioned their Police car ahead of the Subaru's likely route along Tremaine Avenue and sought permission from CentComms to deploy road spikes. After permission was given, Officer B set the spikes in the path of the Subaru then took cover (as required by policy). The Subaru drove over the road spikes at approximately 110kph (in a 50kph speed zone), and Officer B pulled them off the road before Officer A drove past. Officers B and C then joined the pursuit, with lights and siren activated.
36. The Subaru's tyres slowly deflated as it continued along Tremaine Avenue, until it was travelling on its rims at approximately 40kph. Officer A advised CentComms that the fleeing driver was struggling to control the Subaru, and was having a "*hard time keeping it in a straight line*." He later described that the fleeing driver was "*fish tailing*" across both lanes of the road. Officer A was concerned that any oncoming traffic might not be able to see the Subaru, and vice versa. Officer A recorded in his Fleeing Driver Notification form:<sup>3</sup>

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<sup>2</sup> The shift commander is a senior officer at the Police communications centre, usually ranked inspector. During a pursuit, the shift commander takes on the role of pursuit controller, and responsibility for supervising a pursuit and coordinating the overall tactical response.

<sup>3</sup> The Fleeing Driver Notification form is completed by the lead vehicle driver and captures a range of information about a pursuit, including a narrative.

*“I formed the belief that the fleeing driver was so determined to avoid apprehension that he was willing to put his life and that of those around him in an increasing amount of risk...I formed the belief that further action would be required in order to bring the pursuit to a safe end.”*

37. Rather than abandon the pursuit, which the Authority believes he should have done, Officer A decided to attempt a ‘moving block’ whereby he and other pursuing Police cars would position themselves in formation around the Subaru and reduce its speed (without making contact), bringing it to a halt. Officer A radioed CentComms for permission to undertake this manoeuvre, which was given. However, before all the Police cars could get into position, Subaru turned down a side road.
38. The ‘moving block’ is no longer included in Police policy and officers are not trained to use it. Officer A accepted during his interview with the Authority that it was not a tactic available to him and he should not have attempted it.
39. The CentComms shift commander said that he knew that policy was “*silent*” on this tactic, but decided that it was safe and appropriate to authorise the stop in the circumstances. As he understood the situation, the road was quiet with no traffic in view, the Subaru was travelling at low speed, and one of the tyres had completely degraded yet the driver was not stopping.
40. However, the Authority finds that the shift commander should have known that, since the officers were not trained in this tactic, it was not safe for him to authorise it. The risk posed to the Subaru’s occupants and participating officers by executing the tactic was greater than the threat posed by the fleeing driver at that time.
41. This pursuit came to an end shortly afterwards. The Subaru forcefully rammed past Officers B’s and C’s Police car and turned right onto Heretaunga Street, at approximately 30-40kph.
42. Officer A, who was immediately behind the Subaru, said that he became concerned that oncoming traffic may not be able to see the Subaru due to undulations in the road. He crossed the centre line and drove beside the Subaru “*in an effort to warn oncoming traffic of the pursuit situation.*”
43. The Subaru swerved towards him. Officer A decided to use his Police car to “*push the fleeing vehicle off the road*” to end the pursuit. The Subaru came to a stop at an angle against a brick wall. Officer A stopped at an angle just in front of the Subaru’s bonnet, to prevent it from driving forward. Officer A explained that there were no pedestrians or parked vehicles present, and he believed it was travelling slowly enough to avoid injury to the occupants. He stated: “*the risk of allowing him to continue outweighed the risks of [the action].*”
44. The Authority does not agree that Officer A’s actions were appropriate in these circumstances:
  - 44.1 Firstly, although travelling at low speed with emergency lights activated, Officer A’s decision to cross the centre line to warn any oncoming traffic actually increased the risk for these vehicles by creating an additional hazard.

44.2 Secondly, a forceful vehicle stop poses significant risks to the occupants of both vehicles if not executed with the requisite training, under specified conditions (which did not exist in this instance). It is not a tactic that general duties officers are trained in. Currently such a tactic should only be used in the most serious of circumstances (for example, in an active shooter or hostage situation). This situation did not meet the level of seriousness for this action to be justified. The risk of injury to the three occupants of the Subaru, and Officer A, was too great.

## FINDINGS ON ISSUE 2

There were several points during the pursuit where Mr X's manner of driving created unjustifiable risks, and Officer A should have abandoned the pursuit.

Officer A did not sufficiently communicate the significant risks associated with Mr X's driving to the shift commander, to allow him to make an independent and fully informed risk assessment.

The use of road spikes was appropriate and properly executed.

Officer A should not have instigated a moving block. The shift commander should not have authorised the tactic.

Officer A was not justified in pushing the Subaru off the road and into a wall.

### Issue 3: Was the force used to arrest Mr X justified?

45. It is common ground that Police used force to arrest Mr X. However, Mr X and Police have conflicting accounts of what happened.

#### *Allegations against Police*

46. Mr X is 14 years old, approximately 168-183cm tall and of medium build. When he appeared in court the day after the pursuit, his obvious facial injuries caused his whānau, social worker, Youth Advocate and the Judge concern. After his appearance, his social worker took photographs of Mr X's injuries (with his consent). These injuries included:

- a black left eye;
- lacerations on the bridge of his nose and right side of his forehead;
- facial bruising; and
- significant bruising across the middle of his back.

47. Mr X told his social worker that his injuries were deliberately caused by the officers who arrested him, after he had surrendered. Once the Subaru came to a stop, he said he got out of the driver's seat and put his hands on his head. However, he was immediately pepper sprayed, then punched on the side of his face, before being thrown to the ground and repeatedly kicked in the stomach, possibly by several officers. He had a screwdriver and pliers in his back pocket which fell out during his arrest. He stated he did not resist or threaten Police with any tools or weapons.

48. Mr X's social worker was extremely concerned about what Mr X had told her, particularly as, in her view, Mr X was not prone to exaggeration.
49. Mr X's account was reported to Police by the social worker, however Mr X did not want to be interviewed by Police about his allegations.

#### *Police response to the allegations*

50. All the officers spoken to by the Authority emphatically denied punching or kicking Mr X, or seeing anyone else do so.
51. Officers A, C and D provided similar accounts of the arrest of Mr X and his associates. A fourth officer (Officer B) has a slightly different recollection.

#### *Officer A's account*

52. Officer A said that as soon as both vehicles came to a stop, he got out of his Police car and approached the driver's door of the Subaru with pepper spray ready in his hand, intending to arrest the driver. He was immediately confronted by Mr X, who got out of the driver's seat and adopted a "fighting stance," pointing a metallic object at him.
53. Mr X then "rushed" at him, which Officer A took as both a threat, and an attempt to run past him and escape.
54. Officer A judged that Mr X was about the same height and build as he was, and could cause him serious harm. Officer A yelled at Mr X to stop, then pepper sprayed Mr X's face as he ran towards him. Officer A said he did not have time to issue a warning prior to using the pepper spray.
55. Mr X turned his face away, avoiding the full effects of the spray. Officer A attempted to pull Mr X's arm behind his back and use a takedown technique to bring him under control, but was unsuccessful, partly because he was still holding his car keys and the pepper spray canister, and because he was affected by the residual pepper spray in the air.
56. At this point, another officer (who Officer A could not identify) arrived to help, and together they were able to pull Mr X to the ground. The combination of the change in elevation from the pavement to the road, and Mr X's continued struggling meant that Mr X fell on his upper body and face.
57. Mr X tucked his hands under his body and would not release them when instructed. Officer A said it took "all [his] force" to pull Mr X's left hand from under his body and apply handcuffs. Officer A thought it possible that he used his knee on Mr X's back when restraining him. He said that he didn't remember "specifically placing any substantial force on top of him" but acknowledged that when applying handcuffs, he probably applied "a little bit of force to keep him on the ground."

58. Once handcuffed, Officer A said that Mr X stopped yelling and lay calmly on the ground. When Mr X gave his name, Officer A said he realised that Mr X was a young person and explained his rights as a young person under arrest.<sup>4</sup>
59. Officer A's account is supported by aspects of the statements of Officers C and D:
- Officer C told the Authority (and recorded in his notebook) that he was driving behind Officer A when he saw Officer A push the Subaru into the brick wall. He stopped his Police car ahead and to the left of Officer A's car, which was angled to block the Subaru against the wall. Officer B got out quickly, but Officer C did not see where he went. Officer C ran in front of the stopped vehicles to arrest the front seat passenger.
  - Officer D, who had joined the pursuit near its conclusion, also saw a Police car push the Subaru into the wall. She saw Mr X get out of the driver's seat, look around, then run towards Officer A with a shiny object in his hand. She saw two other officers run towards Mr X, so she went to arrest the front seat passenger with Officer C's help.
  - After the front seat passenger was secured, Officer C said he heard a "commotion" and went to help Officer A with the driver. Mr X was face-down on the ground, not handcuffed, resisting and yelling. He helped Officer A handcuff Mr X by pulling his hand behind his back, then stepped away as Officer A had control. He could smell pepper spray, and saw a screwdriver and vice grips on the ground near Mr X (these items were later collected as evidence).

#### *Officer B's account*

60. Officer B's recollection was that he and Officer C were the first officers to arrive once the Subaru had come to a stop, and that he was the first officer to confront and secure Mr X. He does not recall seeing Officer A push the Subaru off the road.
61. Contrary to Officer C's own recollection, Officer B said that Officer C parked their Police car in front of the Subaru (where Officer A stated he stopped). Officer B said he immediately got out of the passenger seat and "charged" at Mr X, who was half-out of the driver's seat with an object in his hand. Mr X was surrendering to Police.
62. Officer B grabbed Mr X by the shoulder and head and pushed him back against the side of the Subaru. He then used his momentum to spin and throw Mr X to the ground. At some point another officer came to assist him, and Officer B left Mr X with this officer while he went to secure the back-seat passenger.
63. Officer B does not recall using or smelling pepper spray but was later told that Mr X had been sprayed.
64. Officer B's notebook entry does not record any interaction with Mr X, but does state that he arrested the backseat passenger.

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<sup>4</sup> Oranga Tamariki Act 1989, section 217.

### *Assessment of Police accounts*

65. The Authority has not had the benefit of speaking to Mr X. His version of events is the hearsay conveyed by his social worker. The Authority could not test the officers' versions of events with Mr X, thus the assessment of the officers' accounts was by necessity confined to examining the internal and external consistency of their statements.
66. The accounts of Officers A, C and D are sufficiently consistent for the Authority to conclude that Officer A was the first officer that confronted Mr X. Officer A was in a position to do so having stopped the Subaru, and Officer C is clear that he and Officer B arrived after the Subaru had stopped. It is possible that Officer B assisted Officer A in taking Mr X to the ground (as described in paragraph 56) but has since confused the sequence of events and Officer A's involvement. However, it is significant that Officer B also remembers seeing an object in Mr X's hand, indicating that Mr X was holding an item that could pose a threat.
67. The doctor who examined Mr X at Palmerston North Hospital noted that Mr X had widespread 'gravel rash' on the right side of his face and swelling around his nose. He did not note that Mr X had a black eye but recorded that Mr X did not want to open his eyes properly due to irritation from the pepper spray.
68. Mr X did not tell the doctor that Police had assaulted him, but did complain of pain when breathing deeply, and mild abdominal pain.
69. The doctor did not find any evidence of significant chest or abdominal injuries (which could be expected if Mr X had been kicked by several officers) or raise general concerns that Mr X's other injuries were the result of an assault.
70. Mr X's facial injuries, including the black eye, were probably caused when he fell onto the pavement and road surface after Officer A (and possibly Officer B) pulled him to the ground.
71. The bruising on Mr X's back is significant and concerning, but the Authority is unable to determine how it was caused. The Authority notes Mr X did not complain about being stomped on or kicked in his back.
72. On balance, the Authority is satisfied that Mr X was not deliberately punched or kicked by Police.

### *Was the force used by Officer A justified?*

73. Sections 39 and 40 of the Crimes Act 1961 provide for Police officers to use reasonable force to carry out an arrest, and to prevent the escape of a person who *"takes flight in order to avoid arrest"*.<sup>5</sup>
74. Mr X did not respond to Officer A's instructions to stop, and advanced towards Officer A with what looked like a weapon (a screwdriver). The Authority accepts that Officer A believed that Mr X posed a serious threat to him due to his aggressive actions.

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<sup>5</sup> See paragraphs 93-95.

75. The Police Tactical Options Framework guides Police in determining the appropriate level of force to use in certain situations (see paragraphs 96-102 for Law and Police General Guidelines on use of force). The Authority accepts that Mr X was assaultive. In such circumstances, policy permits pepper spray and 'empty hand tactics,' such as grabbing, pulling or punching a person, to be used.
76. Officer A recorded in his Tactical Options Report that he felt it was unsafe to turn his back on Mr X to avoid the threat.<sup>6</sup> In any case, he did not want to allow Mr X to escape as he posed a threat to the other officers arriving at the scene. He did not know who Mr X was at this point, and Mr X's height and build meant it was not immediately obvious that he was a young person.
77. The Authority is satisfied that Officer A had to respond immediately to safely arrest Mr X. Mr X had not responded to Officer A's instructions. As there were no less-forceful options available to him, Officer A was justified in using pepper spray, and taking Mr X to the ground to handcuff him.
78. Once Mr X was on the ground, Officer A again told Mr X to stop resisting, and applied additional force (by pulling Mr X's arm behind him and putting his knee on his back) when Mr X continued to struggle, and resist being handcuffed. Officer C also pulled Mr X's arm behind his back when helping Officer A to apply handcuffs.
79. The Authority does have some concern about the amount of bruising on Mr X's back but has insufficient evidence to conclude that the bruises were deliberately or exclusively caused by the arresting officers. Consequently, the Authority finds that the force applied was justified and proportionate in the circumstances.

### FINDINGS ON ISSUE 3

Mr X was not kicked or punched by Police.

The force that was used to arrest Mr X was justified and proportionate.

#### Issue 4: Was Mr X provided with appropriate aftercare and medical attention?

80. At approximately 2.50am Mr X arrived at Palmerston North Police station, where he received aftercare for the effects of the pepper spray, as required by Police policy.
81. Police had arranged for paramedics to come to the Police station and assess Mr X's facial injuries. Officer A said that Mr X was not cooperative and would not allow photographs to be taken at this point. At 3.15am he was taken to hospital, where he remained for several hours for further assessment and treatment. At 8am he was taken back to the Police station. He remained in custody until appearing in Youth Court on the afternoon of the following day.

<sup>6</sup> An officer is required to complete a Tactical Options Report when he or she has used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

82. As described in paragraph 9, Mr X's injuries were obvious and remarked upon when he attended court. Mr X's social worker took photographs of his injuries. Police did not take photographs of Mr X's injuries until four days later (by which time his injuries had healed significantly).
83. While there is no specific policy about photographing a detainee's injuries when they come into Police custody, it is good practice to do so as soon as is practicable, especially when a vulnerable offender is involved. Police could have taken photographs of Mr X's obvious injuries while he was in custody, awaiting his court appearance.

#### FINDINGS ON ISSUE 4

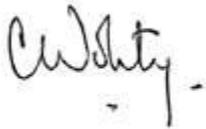
Mr X received appropriate aftercare and medical attention for his injuries.

Police should have photographed Mr X's obvious injuries as soon as practicable after he arrived at Palmerston Police Station, as a matter of good practice.

## CONCLUSIONS

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84. The Authority has found that Mr X was not was not kicked or punched by Police, and that the force that was used to arrest Mr X was justified and proportionate.
85. The Authority also found that:
- 1) Officer A was justified in signalling the Subaru to stop;
  - 2) Although a risk-averse approach is preferred, the Authority accepts that Officer A's decision to commence the pursuit was reasonable in these circumstances;
  - 3) There were several points during the pursuit where Mr X's manner of driving created unjustifiable risks, and Officer A should have abandoned the pursuit;
  - 4) Officer A did not sufficiently communicate the significant risks associated with Mr X's driving to the shift commander, to allow him to make an independent risk assessment;
  - 5) The use of road spikes was appropriate and properly executed;
  - 6) Officer A should not have instigated a moving block. The shift commander should not have authorised the tactic;
  - 7) Officer A was not justified in pushing the Subaru off the road and into a wall;
  - 8) Mr X received appropriate aftercare and medical attention for his injuries; and
  - 9) Police should have photographed Mr X's obvious injuries as soon as practicable after he arrived at Palmerston Police Station, as a matter of good practice.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

26 September 2019

**IPCA: 17-2399**

### Land Transport Act 1998

86. Section 114 of the Land Transport Act 1998 provides that a constable 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 for traffic enforcement purposes.

### Fleeing driver policy

87. The overriding principle of the Police fleeing driver policy is that: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”* Additional principles set out in the policy include:
- a) Fleeing driver events must be managed in the safest possible manner.
  - b) An inquiry phase is preferred over a fleeing driver pursuit wherever possible and when circumstances allow.
  - c) Fleeing driver events will only be commenced and/or continued when the seriousness of the offence and the necessity for immediate apprehension outweigh the risk of pursuing.
  - d) The fact that a driver fails to stop when signalled does not in itself justify a pursuit.
  - e) Decisions to abandon fleeing driver events will be supported.
  - f) Police employees will use risk-based assessments (i.e. TENR) and apply a flexible response to changing circumstances.
  - g) Fleeing drivers will be held to account.
88. The fleeing driver policy outlines that Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so). They must advise Police Communications of their location, direction of travel, description of the fleeing vehicle, and reason for pursuit.
89. Police Communications transmits pursuit warning to all vehicles involved: *“{Call sign} if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge”*

### Risk assessment

90. Under the Police ‘Fleeing driver’ policy, the pursuing officer must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police vehicle.

91. The assessment required of officers includes consideration of the following:
- a) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
  - b) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
  - c) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
  - d) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
92. The TENR risk assessment must weigh up:

*“... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.”*

### Law on use of force

93. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
94. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest.”*
95. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### Police Use of Force policy

96. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
97. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.

98. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
99. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely de-escalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.
100. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
101. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

#### *Use of oleoresin capsicum (pepper) spray*

102. Police policy states that pepper spray may only be used on someone who is actively resisting and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, *“more than verbal defiance”*.

## ABOUT THE AUTHORITY

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### 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.

It is not part of the Police – the law requires it 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. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

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

On completion of an investigation, the Authority must 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 of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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