



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Collision involving a Police patrol car and a vehicle after a pursuit had been abandoned

OUTLINE OF EVENTS

1. At about 1.40am on Tuesday, 19 December 2017 an officer started to pursue a Subaru car on Great North Road in Auckland. The pursuit was abandoned near the Waterview Tunnel.
2. Shortly after the pursuit was abandoned, the Subaru left the motorway in central Auckland. At the intersection of Cook and Hobson Streets, it drove through a red light on the wrong side of the road onto Hobson Street. Officers A and B, who were leaving Auckland Central Police Station to locate the Subaru, turned right onto Hobson Street (against the direction of the one-way system operating on this street). The Subaru came around the corner from Cook Street at speed and collided with the Police patrol car.
3. The driver of the Subaru was charged with failing to stop and reckless driving in relation to the pursuit. He was convicted and sentenced to two months' imprisonment and disqualified from driving for six months.

THE AUTHORITY'S INVESTIGATION

4. The Authority interviewed Officers A and B and the pursuing officer. It also reviewed information gathered by Police during their investigation, including CCTV footage from the Police station garage that captured the patrol car leaving the station and the collision.
5. The Authority considered whether Officer A was driving in accordance with law and Police policy.

THE AUTHORITY'S FINDINGS

Was Officer A driving in accordance with law and Police policy?

6. At about 1.40am on Tuesday, 19 December 2017 an officer started to pursue the Subaru on Great North Road in Avondale, Auckland, due to its speed. The pursuit lasted just over two minutes before being abandoned near the Waterview Tunnel because the pursuing officer lost sight of the Subaru.
7. Shortly after the pursuit was abandoned, the Subaru was observed on CCTV cameras leaving the motorway at the Nelson Street off-ramp in central Auckland and this information was transmitted over the Police radio. The Subaru turned right onto Cook Street with its lights off, narrowly missing a truck. It continued along Cook Street on the wrong side of the road. At the intersection of Cook and Hobson Streets, it drove through a red light on the wrong side of the road onto Hobson Street.
8. Officers A and B were at Auckland Central Police Station when they heard over the Police radio that the pursuit had started. They decided to respond. Before they left the station, they heard that the pursuit had been abandoned. However, they decided to see if they could locate the Subaru. Officer A was driving and, as he left the station car park from Hobson Street, he heard initially that the Subaru had taken the Nelson Street off-ramp and then turned left onto Cook Street (but it had actually turned right onto Cook Street). Officer A activated the patrol car's lights and siren and turned right onto Hobson Street, against the direction of the one-way system operating on this street. The patrol car had travelled a short distance up Hobson Street when the Subaru came around the corner from Cook Street at speed and collided with it.
9. At the time of the collision, Officer A had managed to brake and the patrol car was stationary. The patrol car was pushed backwards several metres with the force of the collision. The officers, the driver of the Subaru and his passenger were not injured. However, both vehicles were significantly damaged. The driver of the Subaru was arrested.
10. Officer A told the Authority he conducted a risk assessment before leaving the Police station and thought it was appropriate to go against the one-way system operating on Hobson Street to get onto Cook Street. He said that he intended to turn right (against the one-way system) when he left the station and that he was urgent duty driving. His plan was to conduct a "*tactical approach*" which involved driving without activating his patrol car's warning lights and/or siren once he got onto Cook Street. He intended to try and follow the Subaru at a safe distance so he could report on its location.
11. In 2016 the 'Fleeing driver' policy was amended to remove the 'Search phase' and replace it with an 'Inquiry phase'. This means that, when pursuits have been abandoned, officers should not drive around the nearby area looking for a fleeing vehicle. Instead, they are to undertake inquiries such as checking the Police database for the address of the registered owner. In this case, as the pursuing officer had not been able to obtain the registration number of the vehicle before the pursuit was abandoned, inquiries could have been made with the agency holding the CCTV footage. Even if Officer A had intended to conduct an Inquiry phase, the policy states that

an Inquiry phase does not qualify for urgent duty driving. The Authority considers that Officer A breached the 'Fleeing driver' policy because he should not have been trying to locate the Subaru after the pursuit had been abandoned.

12. Officer A told the Authority he was urgent duty driving when he left the Police station. Police policy describes 'urgent duty driving' as driving by an officer "*above the speed limit or the natural flow of traffic*". Officer A was not driving above the speed limit at the time he left the station and collided with the Subaru. However, the Authority was unclear as to the meaning of "*above ... the natural flow of traffic*" and sought clarification from Police. Police have advised that this means above the speed of normal traffic flow. For example, if traffic on a motorway with a 100kph posted speed limit is only able to travel at 60kph due to congestion, an officer will be driving above the natural flow of traffic if that officer's speed is 80kph.
13. Officer A was driving against the one-way system, not above the speed limit or the natural flow of traffic. The Authority considers that Officer A was not undertaking urgent duty driving as described by policy when he left the Police station and should not have driven the wrong way up Hobson Street in order to conduct a tactical approach contrary to policy.
14. Rule 1.8(3)(b) of the Land Transport (Road User) Rule 2004 provides that an officer is not in breach of the rule if that officer proves that the act or omission was necessary in the execution of his or her duty. There was no reason at all for Officer A to attempt to locate the vehicle after the pursuit had been abandoned. The Authority considers that Officer A's driving was not necessary in the execution of his duty as a Police officer and therefore the defence under Rule 1.8(3)(b) was not available to him.
15. At the time of the collision with the Subaru, Officer A was subject to the same road rules as a normal road user. Police said they considered charging Officer A with a driving offence, but his actions "*did not meet the threshold*" because:
 - the driving was over a very short distance, and happened at 1.40am;
 - it was at the "*very minor end*" of the scale;
 - Officer A and his partner had checked there was no other traffic around;
 - the vehicle's warning lights were activated; and
 - Officer A believed he was acting in the execution of his duty.

FINDINGS

Officer A was breaching Police policy by attempting to locate the Subaru after the pursuit had been abandoned.

Officer A was also not urgent duty driving when he left the Police station and should not have driven the wrong way up Hobson Street.

SUBSEQUENT POLICE ACTION

16. Following this incident, Officer A was reassessed under the Police Professional Driver Programme. His decision making when responding to dispatched and urgent jobs was discussed but no further driver training was recommended.
17. The Police investigation identified that on occasion other Police units leaving Auckland Central Police Station from Hobson Street had turned right against the one-way system in order to attend incidents more quickly. Police intended erecting warning signage at the Hobson Street exit from the station to advise staff that turning right is prohibited. However, Police are moving to a new Auckland Central Police Station, so this will no longer be an issue.

CONCLUSIONS

18. The Authority has concluded that Officer A did not comply with the 'Fleeing driver' policy. In addition, he was not urgent duty driving when he left the Police station and collided with the Subaru.

RECOMMENDATION

19. Pursuant to section 27(2) of the Independent Police Conduct Authority Act 1988, the Authority recommends that the Commissioner of Police amends the wording in the 'Urgent Duty Driving' policy to make it clear as to what is meant by "*above ... the natural flow of traffic*". The Authority suggests that the confusion may be overcome by wording the policy as follows: "*above the speed limit or above the speed of the natural flow of traffic*".



Judge Colin Doherty

Chair
Independent Police Conduct Authority

15 October 2019

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Land Transport Act 1998

20. Section 7 of the Act states that a person may not drive a vehicle, or cause it to be driven, recklessly or *“at a speed or in a manner which, having regard to all the circumstances, is or might be dangerous to the public or to a person”*.
21. Section 8 of the Act states that a person may not drive a vehicle, or cause it to be driven, carelessly or *“without reasonable consideration for other persons”*.

Land Transport (Road User) Rule 2004

22. Rule 1.8(3)(b) provides that an enforcement officer is not in breach of the rule if that person proves that the act or omission was necessary in the execution of the person’s duty.
23. Rule 11.8 provides sufficient compliance for the driver of an emergency vehicle that has its lights and siren activated and is driving through traffic lights if the driver reduces speed to less than 20kph and then proceeds, taking due care to avoid collision with pedestrians and other traffic.

‘Fleeing driver’ policy

24. The policy states that if a fleeing driver is not apprehended during a pursuit, *“all viable lines of inquiry to identify and hold the fleeing driver accountable should be exhausted”*. An inquiry phase may consist of, but not limited to, the following actions:
 - Aircraft monitors the fleeing driver to allow inquiry phase to be initiated;
 - observations on known addresses;
 - registered vehicle address inquiry;
 - speed camera photographs;
 - unlawfully taken vehicle inquiries;
 - reported petrol drive-offs;
 - CCTV footage area inquiries;
 - section 118 Land Transport Act 1998 letter to registered owner; or
 - 28 day impoundment under section 96 (1AB) Land Transport Act 1998.
25. The policy also states an inquiry phase does not qualify for urgent duty driving.

'Urgent Duty Driving (UDD)' policy

26. Urgent duty driving is when an enforcement officer on duty is driving above the speed limit or the natural flow of traffic, and may not be complying with certain traffic rules and is either:

- responding to a critical incident;
- gathering evidence of an alleged offence;
- apprehending an offender for an alleged traffic or criminal offence;
- apprehending a fleeing driver;
- providing security to, and facilitating the movement of, an official motorcade as part of an operation (as established in the relevant Operation Orders);
- engaged in activities approved by the Commissioner in writing.

and is relying on the defences under the Land Transport (Road User) Rule 2004 and the Land Transport Act 1998 for not complying with certain traffic rules and regulations which would prevent the execution of that duty.

27. A 'tactical approach' refers to urgent duty driving without the activation of either warning lights and/or siren. Undertaking urgent duty driving without the activation of warning lights and/or siren increases the road safety risks to public and Police. Therefore, using a tactical approach is the exception rather than the rule. Vehicle speed and manner of driving must reflect and take into account the increased risks resulting from the absence of warning devices.

28. A tactical approach can involve:

- adjusting vehicle speed;
- turning off or not activating the siren; or
- turning off or not activating the warning lights.

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.

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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