

## Triple fatality following Christchurch pursuit

### OUTLINE OF EVENTS

1. On the evening of Sunday 13 January 2019, a silver Mazda Familia Station Wagon was stolen from outside a residential address in Hoon Hay, Christchurch. Also stolen that evening was a white Mazda Familia Station Wagon from a residential address in Wigram, Christchurch.
2. At about 11.10pm that same night, Officers A and B were on patrol in Christchurch City and were stationary at a red traffic light on Colombo Street at the intersection with Brougham Street. They observed two Mazdas travelling closely together through the intersection at speeds in excess of 100kph in a 60kph zone.
3. Officers A and B turned into Brougham Street with the intention of catching up to the Mazdas. They were about 200 metres behind with their blue and red lights activated when the Mazdas turned left into Gasson Street. When Officers A and B turned into Gasson Street they noticed that the white Mazda had stopped on the left-hand side of the road and they saw a person hastily enter the vehicle through the rear passenger door. The second Mazda was nowhere in sight. The officers commenced a pursuit with the white Mazda but abandoned it a minute later due to the manner of driving.
4. Officers D and E heard over the radio that the fleeing vehicle was heading towards them. Officer D deployed road spikes and as the Mazda travelled over them, it left the road and hit a tree. The fuel tank ruptured and the vehicle caught fire. Police ran towards the vehicle, but due to the intensity of the fire, were unable to save the three occupants. The driver, Glen McAllister (16yrs), his brother Craig McAllister (13yrs), and Brooklyn Taylor (13yrs) died at the scene.
5. Police notified the Independent Police Conduct Authority, and the Authority independently investigated the officers' actions during and after the pursuit. This report sets out the results of that investigation and the Authority's findings.

## THE AUTHORITY'S INVESTIGATION

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6. As part of its investigation the Authority interviewed Officers A, B, C, D and E, the dispatcher and pursuit controller.<sup>1</sup> It also spoke with three independent civilian witnesses who observed parts of the incident. The Authority monitored the Police investigation and reviewed the documentation produced by the Police investigation team. It sought an independent review of the Police Serious Crash Unit report.
7. The Authority identified and considered the following issues:
  - 1) Did Police comply with the Fleeing Driver policy before and during the pursuit?
  - 2) Was Officer D justified in deploying road spikes?
  - 3) Did Officers A and B know who the occupants of the Mazda were?

## THE AUTHORITY'S FINDINGS

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### Issue 1: Did Police comply with the Fleeing Driver policy before and during the pursuit?

#### *Pre-initiation*

8. Officers A and B pulled up behind the white Mazda on Gasson Street with the intention of speaking with the driver. As they did so, Officer B called SouthComms over the radio and said *"we're about to have a pursuit I think."* Officer B told the Authority he said this to notify SouthComms and other units nearby as, although the Mazda was stationary, he believed it was about to flee. As anticipated, the Mazda sped away and Officers A and B pursued it.
9. The SouthComms dispatcher gave the pursuit warning which Officer B acknowledged, as per Police policy.<sup>2</sup> Officer A was a Silver class driver authorised to engage in urgent duty driving and pursuits under supervision of a Gold class driver. Officer B, a Gold class driver, was responsible for providing radio communications.
10. Section 114 of the Land Transport Act 1998 provides that a Police officer may signal or request the driver of a vehicle to stop as soon as practicable and provide their details for traffic enforcement purposes. In accordance with section 114, the officers had the lawful authority, and reason, to signal the Mazda to stop.

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<sup>1</sup> The dispatcher advises the shift commander when a pursuit has commenced, provides the pursuit warning, maintains radio communications with the units involved in the pursuit, and communicates instructions from the pursuit controller. The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options. In most cases, the pursuit controller role is taken on by the shift commander in the Communications Centre.

<sup>2</sup> See paragraph 82 for relevant Police policy.

11. As the Mazda failed to stop, the Authority accepts Officers A and B were justified in pursuing it because:
- They were concerned about the Mazda's previously observed speed which they estimated to be in excess of 100kph in a 60kph zone;
  - The Mazda was travelling too fast for the officers to get a description of the occupants and they said they did not know their identities.<sup>3</sup>

#### *Police actions during the pursuit*

12. A senior sergeant, Officer C, who was driving east towards the intersection of Moorhouse Avenue and Gasson Street, heard over the radio that a patrol car was in pursuit so he activated his lights to forewarn oncoming traffic. As the Mazda and the patrol car turned left into Moorhouse Avenue, Officer C conducted a U-turn and followed approximately 30 to 40 metres behind as a secondary pursuit vehicle.<sup>4</sup>
13. Meanwhile, Officer B advised SouthComms of their location, direction of travel, the Mazda's registration, and that there were three occupants in the vehicle. He said the Mazda had been travelling approximately 130kph on Brougham Street but that, during the pursuit on Moorhouse Avenue, Police were travelling behind it at approximately 100kph in a 50kph zone. The Authority is satisfied Officer B provided adequate commentary during the pursuit.<sup>5</sup>
14. An independent civilian witness travelling on Moorhouse Avenue observed the Mazda drive over the Colombo Street overbridge and accelerate away from the two Police cars behind it. He estimated the Mazda was travelling at 150kph to 160kph and that Police were a considerable distance behind it, travelling at approximately 100kph.
15. A second independent civilian witness observed the fleeing Mazda travelling along Moorhouse Avenue at speeds he estimated to be 150kph to 180kph near the Durham Street South intersection. He looked in his rear-view mirror and saw red and blue flashing lights in the distance. He estimated the two Police cars were approximately 800 metres to a kilometre behind the Mazda.
16. Based on the accounts provided by the independent civilian witnesses, the Authority is satisfied that Officers A and B, and Officer C had their red and blue lights and siren activated and were a substantial distance behind the Mazda. Although the officers travelled at 100kph in a 50kph zone, the Authority is of the view that this speed was reasonable in the circumstances because:

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<sup>3</sup> Refer to Issue 3.

<sup>4</sup> See paragraph 84 for relevant Police policy.

<sup>5</sup> See paragraph 77 for relevant Police policy.

- Moorhouse Avenue is a wide, straight, well-lit road;
- it was late on a Sunday night and there was very little pedestrian or vehicular traffic on the road;
- there is good visibility at intersections; and
- the area is a non-residential shopping district with buildings set back from the road.

17. Officers A, B, and C took appropriate steps to ensure the pursuit was conducted safely and in accordance with the law and Police policy.

### *Abandonment of the pursuit*

18. The Mazda travelled through a red light at the intersection of Montreal Street and Moorhouse Avenue, in excess of a 100kph in a 50kph zone. Officer A told the Authority the Mazda was a long way ahead of them and only the vehicle's taillights were visible. Due to the unsafe manoeuvre, Officer B decided to abandon the pursuit, a decision which Officer A said he agreed with.

19. Officer B notified SouthComms that "*we're bailing out*" (which he later acknowledged was an informal use of language). Officer A pulled over and stopped next to a gas station at the intersection of Antigua Street and turned off the Police car's lights and siren, as per Police policy.<sup>6</sup> Officers A and B remained stationary for five to ten seconds before starting a self-initiated 'inquiry phase' (which Officer B later acknowledged they should have sought approval for) and continued along Moorhouse Avenue at the posted speed limit.<sup>7</sup>

20. A minute after Officer B abandoned the pursuit, the pursuit controller authorised an 'inquiry phase'. However, the dispatcher did not broadcast a formal direction for all units to abandon. Although the officers involved understood the pursuit had been abandoned, SouthComms should have confirmed this on the radio before authorising the inquiry phase. Notwithstanding, the Authority is satisfied that there were no Police units now pursuing the Mazda and the failure to formally broadcast the abandonment did not contribute to the tragic outcome.

21. Meanwhile, Officer C continued along Moorhouse Avenue. He said he did not hear Officer B's transmission that they were abandoning the pursuit but he heard

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<sup>6</sup> See paragraph 87 for relevant Police policy.

<sup>7</sup> If the fleeing driver is not apprehended at the time of the fleeing driver pursuit, all viable lines of inquiry to identify and hold the fleeing driver accountable should be exhausted. An inquiry phase should be dealt with as a priority prevention activity. This broadcast was made a minute after the pursuit was abandoned.

SouthComms authorise an inquiry phase which he knew meant the pursuit had been abandoned. Officer C did not pull over and stop as required by policy,<sup>8</sup> but he deactivated his lights and siren and reduced his speed to 50kph. The Mazda was by now out of sight so he turned down Lincoln Road to intercept the Mazda if it had gone that way.

22. The first independent civilian witness said the officers had deactivated their lights by the time they reached the Selwyn Street intersection (500 metres after Antigua Street) and *“it was clear they weren’t chasing [the Mazda] anymore.”*
23. The second independent witness said that as the Police vehicles passed him at the intersection of Lincoln Road, they were *“obviously not pursuing.”* He observed Officer C turn left down Lincoln Road while Officers A and B carried on along Moorhouse Avenue (which becomes Blenheim Road).
24. A third independent civilian witness, who was parked at a service station on Blenheim Road, *“heard the [Mazda] flying past”* and observed it travel through a red light at the intersection of Matipo Street at *“at least 100 [kph].”* About 30 seconds later, he saw a Police car (Officers A and B) go through the intersection. He estimated the Police car to be at least 700 to 800 metres behind the speeding vehicle, travelling at the posted speed limit.
25. According to the three independent civilian witnesses, Police were several hundred metres, up to a kilometre, behind the Mazda during and after the pursuit. The Authority’s review of the SouthComms audio and CCTV footage also confirms there were no Police vehicles pursuing the Mazda on Blenheim Road, including at the time of the crash.

#### FINDINGS ON ISSUE 1

Officers A, B, and C took appropriate steps to ensure the pursuit was conducted safely and in accordance with the law and Police policy.

The Authority notes the following minor policy breaches but accepts they had no bearing on the outcome of the incident:

- Officer B should have advised SouthComms that they had *“abandoned”* the pursuit, rather than *“bailed out”*.
- Officer C should have pulled over and stopped once he learned the pursuit had been abandoned.
- SouthComms should have confirmed abandonment of the pursuit before authorising the inquiry phase.

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<sup>8</sup> See paragraph 87 for relevant Police policy.

## Issue 2: Was Officer D justified in deploying road spikes?

### *Law and Police policy*

26. The legal ground for Police deployment of spikes is section 39 of the Crimes Act 1961, which provides for law enforcement officers to use reasonable force in the execution of their duties such as arrest. 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.*”
27. Police officers may also use reasonable force to “*prevent the escape of that other person if he takes flight in order to avoid arrest*” under section 40(1) of the Crimes Act 1961.
28. When managing fleeing driver incidents, Police are required to balance protecting community safety against their duty to apprehend those who fail to stop, and to enforce the law. Police use the TENR risk assessment methodology (Threat, Exposure, Necessity, and Response) to continuously assess foreseeable 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 considered.
29. Police policy on the use of spikes provides that they can be deployed where no other, less dangerous means of stopping a vehicle is reasonably available, and where they can be deployed without unjustified risk to any person. Prior to deployment of spikes, officers should advise Police Communications of the intended deployment location.
30. The policy also differentiates between overt and covert deployment of spikes. A covert deployment requires an unmarked car (or marked patrol vehicle hidden from the offender’s line of sight) and the officer to be concealed prior to deploying the spikes. This is potentially the safest deployment of road spikes as the fleeing driver would not be aware, limiting any evasive manoeuvres.
31. Where a pursuit controller has directed a pursuit of a fleeing driver is abandoned, officers have no power to self-authorise deployment of spikes.<sup>9</sup>

### *Before deployment of the road spikes*

32. Officers D and E were transporting a civilian, Mr X,<sup>10</sup> to a residential address in Hornby when they heard over the Police radio that the fleeing Mazda may be heading in their direction on Blenheim Road. Officer E was in the back of the patrol car with Mr X while Officer D was driving.

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<sup>9</sup> See paragraphs 95-97 for relevant Police policy.

<sup>10</sup> Mr X was not arrested or detained.

33. Mr X said he had heard the pursuit called in on the radio and he also heard it being called off after it went through two red lights. Officer D said he heard the pursuit had been called in and understood it to be abandoned. Although Officer E heard Officer B say they were *“bailing out”* he did not interpret this to mean the pursuit had been abandoned.
34. Nonetheless, Officer D pulled into a layby on Blenheim Road. He told the Authority:

*“I considered that [the Mazda driver] was gonna be at risk regardless... so I found myself in the position where I could respond to that risk for the safety of other motorists as well as ourselves and also the occupants in the car.”*

#### *Officer D’s risk assessment*

35. Officers D and E said they agreed between themselves to lay road spikes (spikes) on Blenheim Road.<sup>11</sup> Officer D said he believed he could self-authorise deployment of spikes under Police’s Fleeing Driver policy.<sup>12</sup>
36. Blenheim Road is a wide four-lane dual carriageway lined with industrial buildings and carparks set back from the road. The roadside verge is lined with trees and permanent advertising signs. 200 metres before the spike deployment site, there is a T junction controlled by traffic lights.
37. Officer D said the *“density of traffic was light”* and he did not observe any pedestrians or cyclists travelling in either direction. At the time of the spikes deployment it was raining steadily.
38. Officer D said he decided to conduct a covert deployment as he believed fleeing drivers sometimes targeted Police when laying spikes. He deactivated all the patrol car lights and decided not to wear a high visibility jacket. Officer D said he chose the site as it was a flat, long, clear stretch of road in a well-lit area with a raised island in the middle which he considered would keep the Mazda on the correct side of the road in case of oncoming traffic.
39. Meanwhile, Mr X remained seated in the rear left seat of the patrol car. Officer D considered it safer to leave Mr X in the Police car than allow him to roam as a pedestrian in the immediate vicinity. He said that if he had let Mr X get out of the car he would have had *“no control over his location or his actions.”* For the purpose of safety, Officer D secured the gun safes and kept the car keys on his person.
40. Officer D subsequently removed the spikes from the boot of the patrol car. As he did so he observed car lights heading in their direction *“somewhere around Clarence Street”*, 1.3 kilometres away. He briefly continued his conversation with Officer E and when he

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<sup>11</sup> A tyre deflation device is designed to slowly deflate tyres in a safe manner to prevent a sudden loss of control.

<sup>12</sup> See paragraphs 99-101 for relevant Police policy.

looked up, the car had “*closed the distance considerably*”. Officer D estimated it was travelling over 100kph. Due to the time, place, and circumstances he suspected this was the Mazda.

41. Officer D waited for two civilian vehicles to pass before laying the spikes so the road was clear with no other vehicles in the immediate vicinity. As the Mazda approached, Officer D threw the spikes out across the road. He estimated the time between stopping the Police vehicle on the side of the road to the time of deploying the spikes to be 30 to 40 seconds.
42. As the Mazda approached the spikes, Officers D and E said it began to swerve towards the right-hand lane before driving over the spikes and crashing.
43. The Authority has reviewed a Police Crash Investigation Report which also concludes that the driver had taken evasive action before running over the spikes. This finding supports Officers D and E’s account that the Mazda had taken evasive action before hitting the spikes.

#### *Justification for spikes deployment*

44. The Authority is satisfied that Officer D conducted a sound TENR risk assessment prior to deploying the spikes. He considered the environmental factors, the appropriateness of a covert deployment and of the location. Although Police policy states that Police cars should be unoccupied when spikes are deployed,<sup>13</sup> Officer D was unaware of his obligations in relation to the carriage of civilian passengers. In the circumstances, the Authority accepts that Officer D considered the safety of himself, Officer E, and Mr X as part of his TENR assessment, and ensured there were no civilians in the immediate area prior to deployment.
45. Officer D said that under section 39 of the Crimes Act 1961, he believed “*the use of spikes was reasonable force to make an arrest in the circumstances as I saw them*”.
46. The Authority finds Officer D was justified in deploying spikes under section 39 because:
  - he was aware the Mazda had been travelling at excessive speed, failed to stop and Police had lawful grounds to arrest the driver;
  - there were no other immediate and less dangerous means available to stop the Mazda;
  - his actions were proportionate to the threat the Mazda posed to the Police and public.

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<sup>13</sup> See paragraph 95 for relevant Police policy.

47. The Authority has also determined that section 40(1) is applicable and, for the reasons outlined above, Officer D had lawful grounds to deploy spikes to prevent the driver's escape.

#### *Compliance with Police policy*

48. The Authority notes that the pursuit controller did not formally abandon the pursuit as required by policy. Consequently, Officer E said he did not know the pursuit had been abandoned. However, when the pursuit controller advised officers that an inquiry phase was authorised, Officer D understood that the pursuit had been abandoned.
49. Where a pursuit controller has directed a pursuit of a fleeing driver to be abandoned, officers have no power to self-authorise a TDD deployment. However, Officer D said he was unaware of this provision and he believed he had the power to self-authorise the deployment of spikes by undertaking a TENR risk assessment. The Authority accepts that Officer D undertook an appropriate risk assessment and that he had legal justification to deploy spikes.
50. Officer D said he did not broadcast his decision to lay spikes as he believed the radio channel should be kept clear for more urgent updates, although in hindsight he recognised he should have transmitted his location. Officers D and E said they attempted to transmit on the radio but were unable to do so as others were broadcasting at the time. Having reviewed the audio recording, the Authority accepts there were other radio transmissions made at this time.
51. As Officers D and E were unable to transmit their location or intent to deploy spikes over the radio, the pursuit controller was unable to make an informed assessment of the situation.

#### *The crash*

52. The Mazda subsequently travelled over the spikes and veered onto the footpath into a vacant carpark. It hit a tree causing the fuel tank to rupture. The fuel tank ignited, causing the Mazda to explode. Officer E advised SouthComms the vehicle had crashed and was engulfed in flames. The dispatcher confirmed the Fire Service were on their way.
53. All three occupants died at the scene.
54. The Police Serious Crash Unit (SCU) report found there were five spikes in the left front tyre and four in the front right. It stated that with that number of spikes in the tyres, it would take 12 to 20 seconds to deflate the tyres. However, the Mazda crashed within 2.1 to 2.3 seconds, and the report therefore concluded that the crash was not caused by the tyres deflating after being spiked.

55. The SCU report concluded that the crash was caused by the driver swerving to avoid the spikes and that excessive speed was a factor.

#### *Independent review of the Police Serious Crash Unit report*

56. The Authority engaged an experienced independent crash investigator to carry out a review of the Police Serious Crash Report. The investigator was also provided with the scene plan and photographs of the spikes and tyre examination together with interviews of Officers D and E and the witness statement of Mr X.
57. The investigator found it unlikely the Mazda lost control *before* it ran over the spikes or that its loss of control was the result of the tyres deflating *after* being spiked.
58. Rather, the investigator found it more likely that the driver swerved to the right to avoid the spikes, but then swerved to the left to avoid the centre island. This manoeuvre, carried out at speed on a wet road, placed the vehicle into an anti-clockwise rotation after it ran over the spikes, causing it to lose control and crash into the tree.
59. The Authority is therefore satisfied that the cause of the Mazda's loss of control was the driver's attempt to avoid the spikes before running over them, which in turn caused the Mazda to lose control and veer off the road and crash into the tree.

#### **FINDINGS ON ISSUE 2**

Officer D was justified under section 39 and 40 of the Crimes Act 1961 to deploy spikes.

The cause of the Mazda's loss of control was the driver's attempt to avoid the spikes before running over them, which in turn caused the Mazda to lose control and veer off the road and crash into the tree.

#### **Issue 3: Did Officers A and B know who the occupants of the Mazda were?**

60. As a matter of public interest, and that of the boys' parents, the Authority has sought to determine whether Officers A and B knew, or should have known, who was in the car. This includes involvement in earlier incidents, knowledge of wider trends, any relevant information relayed to frontline staff on 13 January 2019, and the officers' assessment at the time of the incident.
61. On Saturday 12 January 2019, Officers A and B attended a call at a local high school to recover a stolen vehicle which had been abandoned on the premises. They noted the driver's seat was pulled all the way forward, close to the steering wheel, indicating the driver may have been a youth. The officers found two young boys at a local bus stop, one of whom was Brooklyn Taylor. The boys did not fit the description given by witnesses but Brooklyn gave the McAllister brothers' names to Police. Another officer

attended the McAllisters' address but were advised the boys had been home all day. No further action was taken.

### *Officer A and B's observations of the occupants on 13 January 2019*

62. Officer B, the more experienced of the two officers, said he was aware there had been a recent spate of cars stolen and burnt by youths, but he had no idea as to who the occupants of the Mazda were on this occasion. He said he did not know where the person who entered the white Mazda had come from but believed he was a *"short and skinny"* young male, aged 14 to 18 years.
63. Officer A told the Authority that he was unaware of any trends of stolen cars. He said the Southern Police Communication Centre (SouthComms) may have advised that one of the Mazdas had been reported stolen earlier that evening. However, he said they had not been advised of any reports of dangerous driving.
64. Officer A also said that, as the Mazda sped past them at the Colombo and Brougham Street intersection, he was unable to identify or get a description of the occupants. He said the male who entered the Mazda on Gasson Street *"looked like he was possibly a teenager but I was concentrating on the road and the vehicle so didn't pay a lot of attention to his features. It happened very quickly."*
65. Both Officers A and B said they assumed there were three in the vehicle as they saw the male get into the back seat, rather than the front passenger seat. Officer B said he thought he may have seen someone in the front passenger seat. However, they were unable to determine the ages of the front passengers from behind. Officers A and B said they did not discuss who the occupants could be.
66. After the pursuit concluded, Officers A and B returned to Gasson Street where the pursuit began. They found the other (silver) Mazda abandoned in a car park on the other side of the road. It was at this time the officers believed the driver of the silver Mazda had dumped the vehicle and entered the white Mazda. They also thought it was highly likely the driver was a youth as the driver's seat was pulled close to the steering wheel, as in the stolen car the day before (see paragraph 61).
67. The Authority accepts that due to the speed at which the Mazdas passed them on Brougham Street they were unable to identify the occupants. As the Mazdas were stolen, they could not have identified the occupants by checking the Police database for the registered owner. SouthComms had not broadcast any information relating to the Mazdas, or any concerning driving reported by the public prior to this incident. The Authority is satisfied that Officers A and B did not know the identity of the occupants.

## FINDING ON ISSUE 3

The Authority is satisfied that Officers A and B did not know the identity of the occupants.

## FLEEING DRIVERS IN NEW ZEALAND – A COLLABORATIVE REVIEW OF EVENTS, PRACTICES AND PROCEDURES

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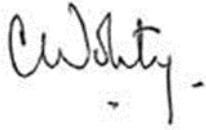
68. In March 2019, the Independent Police Conduct Authority and Police released a jointly conducted review of the fleeing driver environment and the application of existing policy. The report endorsed current policy approach to fleeing driver events but highlighted eight recommendations to enhance Police understanding and application of the policy, including changes to the way these events are handled, the training given to officers and the way the events are recorded and investigated. Additionally, it highlights the need for further research to understand why some drivers flee.
69. Police will commission further research and analysis of fleeing drivers to improve understanding of drivers' motivations for fleeing, including a focus on young people and alcohol/drug impaired drivers.

## CONCLUSIONS

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70. The Authority has determined that Officer D was justified in deploying road spikes to effect an arrest, under sections 39 and 40 of the Crimes Act 1961. He conducted a sound risk assessment of the location and risk to public safety prior to deployment.
71. The Authority also found that:
- 1) Officers A, B, and C took appropriate steps to ensure the pursuit was conducted safely and in accordance with the law and Police policy;
  - 2) The Authority notes the following minor policy breaches but accepts they had no bearing on the outcome of the incident:
    - Officer B should have advised SouthComms that they had “*abandoned*” the pursuit, rather than “*bailed out*”;
    - Officer C should have pulled over and stopped once he learned the pursuit had been abandoned; and
    - SouthComms should have confirmed abandonment of the pursuit before authorising the inquiry phase.
  - 3) The cause of the Mazda's loss of control was the driver's attempt to avoid the spikes before running over them, which in turn caused the Mazda to lose control and veer off the road and crash into the tree.

4) Officers A and B did not know the identity of the occupants.

A handwritten signature in black ink, appearing to read 'C. Doherty'.

**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

30 January 2020

**IPCA: 18-1450**

### Law

72. Under section 114 of the Land Transport Act 1998 Police are empowered to stop vehicles for traffic enforcement purposes.
73. 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.”*
74. 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.”*
75. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### Fleeing driver policy

76. The overriding principle of the Police fleeing driver policy is that: “Public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver”.
77. It is the responsibility of the lead vehicle driver, or Police passenger, to notify Police Communications as soon as practicable and when it is safe to do so, that a vehicle has failed to stop, the location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not a reason).
78. Under the Police ‘Fleeing driver’ policy, the pursuing officer[s] must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit. 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.
79. 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.”
80. During a pursuit, warning lights and siren must always be simultaneously activated. The Communications Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.
81. 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.
82. 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”
83. Officers are required to carry out risk assessments before and during a pursuit in order 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 car.
84. A secondary vehicle may follow behind the lead vehicle at a safe distance to provide support and tactical options as required.
85. Fleeing driver incidents must be managed in the safest possible manner. A pursuit will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing. The fact that a driver is fleeing does not in itself justify engaging in a pursuit.
86. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the identity of the offender becomes known, the fleeing driver does not pose an immediate threat to public or Police, and they can be apprehended later.
87. Officers who decide to abandon a pursuit must notify SouthComms and immediately reduce their speed to increase the distance between the fleeing vehicle and their own. They should deactivate their lights and siren once below the posted speed limit and stop as soon as it is safe to do so.

88. If the fleeing driver is not apprehended at the time of the fleeing driver pursuit, all viable lines of inquiry to identify and hold the fleeing driver accountable should be exhausted. An inquiry phase should be dealt with as a priority prevention activity.

### **Police vehicle management policy**

89. Constables must consider the urgency of the job at hand against the safety and purpose of the passenger(s) in their car, without impacting on their ability to safely execute their duties.
90. Police employees may carry members of the public in Police vehicles in operational situations and in the lawful execution of their duty. This includes civilians who officers are obligated to carry due to the nature of a particular event or incident.
91. Officers must continually assess any threat the passenger may be exposed to and how urgent it is to respond to a situation with a civilian passenger present. Officers must consider whether they can adequately deal with the incident with a passenger in the car and if they do decide to attend, they should either provide an additional briefing to the passenger or drop the passenger at a safe location and advise the Police Communications Centre.

### **Tyre deflation devices policy**

92. Tyre deflation devices (TDD) can be used under section 39 of the Crimes Act 1961.
93. Deploying a tyre deflation device (TDD) is a tactical option to stop a fleeing driver in the safest possible manner, with the minimum force necessary.
94. Prioritising safety over the immediate apprehension of a fleeing driver is critical to ensuring the safety of all, reducing trauma, and ensuring the trust and confidence of the public.
95. Prior to deployment, officers should advise Police Communications of the intended deployment location. The site must always provide cover and an escape route for deployment staff to ensure safety. Police vehicles in the immediate deployment area should not be occupied in case the fleeing driver crashes into the Police vehicles.
96. An overt deployment occurs when a marked patrol car is visibly parked on the same road as the target vehicle. Staff must wear a high visibility jacket and be mindful of traffic, not just the fleeing driver.
97. A covert deployment requires an unmarked car (or marked patrol vehicle hidden from the offender's line of sight) and an officer concealed prior to the spikes deployment. This

is potentially the safest deployment as the target vehicle driver would have no indication that the deployment is about to occur, limiting any exit or evasive manoeuvres.

98. Deployment staff who are fully certified as a primary or secondary responder may deploy a TDD:
- where no other, less dangerous means of stopping the vehicle are reasonably available
  - where the deployment can be effected without unjustified risk to any person
- and
- on the authority of the pursuit controller, as per the Fleeing Driver policy
- or
- by deployment staff who self-authorise a deployment, based on their TENR risk assessment, without approval from the pursuit controller – excludes deployment against heavy vehicles.
99. Staff can deploy a TDD at their own discretion, but only in accordance with the TENR risk assessment if that indicates that an immediate response is justified, and when they are unable to gain prior approval from a pursuit controller. Potential situations are where non-deployment could have the gravest consequences including immediate risk of serious injury or loss of life.
100. Officers who self-authorise a TDD deployment may have to justify their decision. They must notify the pursuit controller as soon as possible of a self-authorized deployment including the outcome.
101. Where a pursuit controller has directed a pursuit of a fleeing driver to be abandoned, officers have no power to self-authorise a TDD deployment.





## 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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