

Speed while travelling to Armed Offenders Squad briefing unjustified

Summary of the Incident

1. On 19 January 2020, Police in Nelson received credible information about Mr X concerning his recent violence, access to methamphetamine and possession of a semi-automatic shotgun. On 20 January 2020, a member of the Nelson Criminal Investigation Branch (CIB), Officer A, contacted the Armed Offenders Squad (AOS) Commander, Officer B. They decided that AOS officers should assist with Mr X's arrest, and Officer A sought a search warrant for Mr X's house.
2. Once the warrant was granted, Officer B, who is based in Blenheim, paged the AOS officers. He and his second in command, Officer C, drove to Nelson for a briefing. On the way Officer B was measured on a Police radar and observed by a Highway Patrol Officer travelling at 158 kph in a 100 kph zone with his lights and sirens activated.¹ Officer B says this speed was justified as he was 'urgent duty driving.'²
3. Other AOS officers who travelled to Nelson at a maximum speed of between 120-130 kph for the briefing also say they were urgent duty driving.
4. After the briefing, the AOS officers were deployed from Nelson to Motueka to execute the search warrant and Mr X was arrested without incident.
5. Police notified the Authority who conducted an independent investigation.

Issue examined by the Authority

6. We considered one issue, namely whether Officer B and other AOS officers were justified in travelling under urgent duty driving from Blenheim to Nelson, to attend a briefing prior to the execution of the search warrant.

¹ A radar is a speed detection device used by Police.

² Urgent duty driving is when a Police officer on duty is driving above the speed limit or against the natural flow of traffic and may not be complying with certain traffic rules. The relevant policy is set out in paragraphs 25-28.

The Authority's Findings

7. The Authority found Officer B was not justified in using urgent duty driving to travel between Blenheim and Nelson. Additionally, he did not provide the other AOS officers with enough information about the urgency of the matter to allow them to make their own assessments about whether they needed to travel to Nelson above the speed limit.

Analysis of the Issue

8. On the evening of 19 January 2020, Police in Nelson received information about Mr X concerning his recent violence, access to methamphetamine and possession and intended use of a semi-automatic shotgun.
9. At 8am on 20 January 2020, Officer A, a detective, was assigned the file and started preparing an application for a search warrant. At 9am Officer A called Officer B. They agreed that the matter required an AOS response to safely execute the search warrant and arrest Mr X. Officer B told Officer A to call him once he had obtained the search warrant.
10. Officer B did not immediately notify the AOS officers that it was likely they would be required later that day. After speaking to Officer A, he continued tasks for his 'day job,' looked at the AOS resources available, and considered options about what they would do. He believes he mentioned that there might be an AOS job to Officer C and a member of Officer A's CIB team (who was also a member of AOS based in Nelson) and who was preparing the search warrant briefing document.
11. The search warrant was signed at 11.10am. Officer A notified Officer B at 11.20am, and Officer B told him there would be a pre-operation briefing at 1.30pm in Nelson.
12. At 11.22am Officer B paged members of the AOS team with a '222' code, advising that all officers were required at a briefing in Nelson at 1.30pm and should be "*ready to go.*"³ The AOS team comprised officers from the Blenheim and Nelson areas.
13. Officer B says he asked Officer A to have an officer from Motueka deployed to wait in the vicinity of Mr X's house so Police would know if he left. However, Officer A does not recall being asked to do so, and this was not put in place.
14. Officer B decided not to send AOS staff members straight to Motueka, as there were only three AOS officers in Nelson at the time. He says deploying AOS immediately, before they had a full team available, may have compromised the operation should Mr X have become aware of their presence in the area.

³ A '111' code indicates that an emergency response is required for an incident happening at the time, a '222' code generally refers to the carrying out of a search warrant, or a pre-planned operation.

15. At 11.30am, Officers B and C left Blenheim in an unmarked Police car. Officer B was driving with Officer C as his passenger. Officer B activated his lights and sirens and started urgent duty driving to Nelson. He says that, in doing so, he took account of environmental factors and carried out a threat-exposure-necessity-response (TENR) assessment as required by Police policy.⁴
16. During the journey, Officer D, a Highway Patrol officer, was travelling in the opposite direction towards Blenheim. He saw Officer B's and C's car heading north on a straight, south of the Rai Valley township on SH6, and considered they were travelling at excessive speed. He locked his radar onto their car and observed that they were going 158 kph in a 100 kph speed zone. He did not recall seeing any other traffic near Officer B's car.
17. Officer B says he has travelled the route between Blenheim and Nelson many times, at both the posted speed limits and high speeds. He believes just prior to his speed being recorded on the radar by Officer D he had passed more than one vehicle and pulled back to the left side of the road while travelling down a slight hill. He believes at the time Officer D saw him he was probably going the highest speed of the journey, but was driving to the conditions. He continued urgent duty driving after this. He did not consider his driving was dangerous, and states that he is trained to undertake urgent duty driving in a safe manner.
18. Officer C recalls that Officer B had just passed a vehicle and was pulling back into the left-hand lane heading downhill on a 700 metre straight stretch when Officer D came past and recorded his speed on his radar. Officer C believes they were three or four kilometres from the Rai Valley township at the time. He told us he did not see the speedometer, had not been looking at it during the journey, and did not feel they were going fast. He states that Officer B was driving to the conditions, and if he had felt it was excessively fast, he would have told him to slow down.
19. We do not accept Officer C genuinely believed this. He is an experienced Police officer, and we consider he would have been aware that they were travelling at high speed.
20. Officer D asked over the Police radio whether the unit he had seen travelling at excess speed needed assistance. He spoke over the phone to another of the AOS team members who was travelling to Nelson for the briefing and was assured no assistance was needed. Officer D accepted this, cleared the radar, and continued without questioning them further.
21. The officers have differing recollections about where Officer B was caught on the radar. However, Officer B accepts that he was travelling at 158kph.
22. Officers B and C arrived in Nelson just before 1pm. Officer B says he needed to finalise the briefing, and the earlier he arrived the better in case Mr X left his house. They needed enough AOS officers available to safely conduct a vehicle stop if this was required. The briefing was conducted at 1.30pm, and at 1.50pm the AOS and CIB investigation teams left Nelson Police Station and drove in convoy towards Mr X's house in Motueka.

⁴ The Police threat assessment methodology 'TENR' (Threat Exposure Necessity Response) is a decision-making process that supports the timely and accurate assessment of information directly relevant to the safety of Police and others. The response to any given situation must be considered, timely, proportionate, and appropriate. The overriding principle when applying TENR is that of 'safety is success'.

23. Officer B says most of the journey to Motueka was at normal road speed but from time to time, in order to keep the convoy together, lights and sirens were activated, for example to pass through intersections.
24. He explained the convoy was in formation to be ready to do an armed vehicle stop. He spoke about the need to keep a low profile while heading toward Motueka. Any out-of-town Police presence would be quickly recognised, which may have alerted Mr X. Consequently, he chose to drive the inland route to Motueka to limit exposure of the AOS.

Urgent duty driving

25. Rule 5.1(1) of the Land Transport (Road User) Rule 2004 states that drivers must not drive at a speed exceeding the applicable speed limit. Subsection 3 provides a driver will not be in breach if they prove that at the time the vehicle was being driven, *“the vehicle was being used by an enforcement officer engaged on urgent duty and compliance with the speed limit would be likely to prevent the execution of the officer’s duty.”*
26. Police policy defines urgent duty driving as when an on-duty officer is driving above the speed limit or against the natural flow of traffic and may not be complying with traffic rules. Police define certain circumstances when urgent duty driving is permissible, including when the officer is responding to a critical incident.
27. A critical incident includes situations where:
 - force or the threat of force is involved;
 - any person faces the risk of serious harm; or
 - Police are responding to people in the act of committing a crime.
28. Policy states that urgent duty driving must be able to be justified in response to the threat, and wherever possible, lights and sirens are to be continually used unless a tactical approach is required.⁵ The overriding principle of the policy is that public and Police employee safety takes precedence over the necessity to undertake urgent duty driving. No duty is so urgent that it requires the public or Police to be placed at unjustified risk.

Officer B’s justification for his speed

29. Officer B says he viewed the operation to search Mr X’s house and arrest him as a ‘critical incident’ which justified his use of urgent duty driving under Police policy.
30. Officer B determined this was a critical incident because:

⁵ A ‘tactical approach’ refers to urgent duty driving without the activation of either warning lights and/or sirens. Undertaking urgent duty driving without the activation of warning lights and/or sirens increases the road safety risks to public and Police. Therefore, using a tactical approach is the exception rather than the rule.

- In the worst case, he believed Mr X could pose a serious threat to an identified member of the public or to the wider community if he left his house as Police knew he was unstable, violent and had previously stated he wanted to shoot someone.
 - Officer B believed Mr X had access to a shotgun. Police had evidence he had recently fired it.
 - Mr X was drug affected (methamphetamine) and a member of the Mongrel Mob. Officer B referred to the unpredictability of people who have taken methamphetamine, and that Mr X had already demonstrated his readiness to use significant violence.
 - Officer B was concerned that approximately 12 hours had passed between Police first receiving information about Mr X, and him being notified. He felt the Nelson Police should have invoked emergency powers under the Search and Surveillance Act 2012 when they first received the information about Mr X on 19 January 2020.⁶
31. Additionally, Officer B said he wanted to be in Nelson to be able to respond in case Mr X left the house, and he needed to be there early enough to gather sufficient information to brief the AOS officers.

Was Officer B's speed justified?

32. The Authority accepts that this was a matter necessitating AOS assistance to safely execute a search warrant for a potentially armed and violent offender. However, we do not consider that it was time critical to the extent that Officers B and C say it was.
33. Officer B did not seek out sufficient information to adequately assess the risk posed by Mr X, and instead based his assessment on assumptions.
34. It was speculation that Mr X would go *"looking for [identified individual]."* There is no evidence Mr X intended to do so, and the individual was actually in Police custody at the time.
35. There was also very little evidence of any immediate risk that Mr X would leave his house and shoot someone. Despite stating that this was the worst-case scenario, there was no surveillance at the address. Officer B would not have known if Mr X had left, or what vehicle (if any) he was driving.
36. Officer B made the decision to urgent duty drive based solely on a conversation with Officer A and did not make any further inquiries to support this decision. The only information Officer B recorded from this conversation was Mr X's details, that he was a gang member, that there was possibly a firearm at the address and that one of the neighbours may not be pro-Police. However, Officer A told the Authority that they had time to get a warrant, and the risk of delaying *"[wasn't] huge"* as there was *"nothing to suggest that he was going to go out in the next hour... and shoot somebody"*.

⁶ Sections 8 and 15 of the Search and Surveillance Act 2012 are set out in paragraphs 55-57.

37. On the way to the briefing Officers B and C were listening to the radio for updates. Officer B did not make the necessary inquiries with the investigation team to ensure his initial risk assessment was accurate and evidence-based, despite having sufficient time to do so.
38. Had Officer B truly believed this was a critical incident, we would have expected him to notify and deploy the AOS when he first became aware of the matter at 9am and leave for Nelson himself at that time. Officer B was the one who set the time for the briefing, and in doing so, created the urgency and necessity that he says required him to travel up to 158 kph to get to Nelson.
39. We are satisfied that Officer B said this was a critical incident to justify his actions after the fact. There are no written appreciations to support his assertions about the risks he says he considered to convince us that he genuinely held this belief.
40. The Authority does not believe that urgent duty driving, and therefore Officer B's speed, was required in relation to the operation itself. This is evident as Police did not deem it appropriate to carry out a warrantless search, and did not send anyone to Motueka prior to the warrant being granted to assess and mitigate the assumed risks posed by Mr X.
41. We accept that AOS assistance was required for this matter, but we do not consider that AOS involvement in an operation necessitates or justifies urgent duty driving by default.
42. We asked Officer B whether he considered any AOS job, pre-planned or otherwise, a critical incident; and if speeding to all such briefings is justified. He responded that he did not, and that he thinks it is *"important to follow the right policy and traffic regulations."*
43. When asked why he did not page his AOS team at 9am rather than carry on with business as usual until the warrant was issued, Officer B said he could have had AOS on standby, and have gone to Nelson himself just in case, but then something might have happened in Blenheim requiring AOS attendance.
44. Officer B arrived in Nelson before 1pm. However, had he left Blenheim at the same time (11.30am) and driven at legal road speed he would still have arrived prior to the briefing.⁷
45. Officer B says he wanted to arrive in advance of the briefing to ensure he was prepared for it. However, he could have asked Officer C to drive so that he could use the travel time to prepare. Compliance with the speed limit would not have prevented the execution of his duty or affected the timeliness of the execution of the search warrant in any way.
46. Officer A told us that, when the convoy travelled from Nelson to Motueka, they did not use urgent duty driving. Officer B told us that they drove at normal road speed, through back roads to Motueka so as not to alert the locals. This is not consistent with the level of urgency that Officer B insists was required.

⁷ Google maps says the route from Blenheim Police Station to Nelson Police Station takes 1 hour and 49 minutes. If Officer B had driven at road speed based on this time he would have arrived in Nelson at 1.19pm.

47. Officer B accepts he did not record the basis of his analysis anywhere. He accepts he could have asked Officer C to record their discussions and that on reflection he should have made more written notes.
48. In summary, therefore, we are satisfied that Officer B's justifications for his actions are unconvincing and implausible, and that his speed was unjustified and an offence under the Land Transport Act 1998.

Were the other AOS team members justified in using urgent duty driving?

49. Officer E, who was driving with Officer F as a passenger, and Officer G who was by himself, both used urgent duty driving to travel between Blenheim and Nelson. Officer E says he drove at approximately 120-130 kph and arrived in Nelson approximately 10 minutes before the briefing. Officer G says he drove at approximately 120 kph and arrived 5–10 minutes before the briefing. We accept that these were the officers' maximum rather than average speeds.
50. The officers believed this was a critical incident, justifying their speeds, based on the time set for the briefing. Additionally, they felt the fact that the full AOS team had been called out in itself was indicative of the seriousness of the matter and highlighted that the offender posed a risk of grievous bodily harm or death.
51. The Authority believes Officer B's practice in relation to AOS call out messages/pages was poor, given the minimal information he provided in the page. He should have given more details about risk and urgency. This would have enabled staff to make their own informed decisions in relation to urgent duty driving, rather than speculating or relying on Officer B's judgment alone.
52. The inadequate information sent by Officer B meant his team did not have the opportunity to make their own assessment about whether urgency duty driving was warranted in the circumstances. The timeframe Officer B gave the Blenheim and Picton staff to get to Nelson necessarily made the situation 'urgent' for them. If they had had sufficient warning and had been given notice at the time Officer A called Officer B, they would have had options to get to Nelson without having to urgent duty drive.
53. We accept that on the limited information available to the AOS officers, they were justified in urgent duty driving. If they had not used urgent duty driving, they would not have been able to deploy at the required time. It is reasonable for them to have believed compliance with the speed limit would have prevented the execution of their duty.

FINDINGS

Officer B was not justified in using urgent duty driving to travel from Blenheim to Nelson and Police should have prosecuted him for speeding under the Land Transport Act 1998.

Officer B overstated the risks posed by Mr X in order to justify his speed after the fact.

At the earliest opportunity, Officer B should have notified the AOS team of the pending briefing while the search warrant was being obtained.

Officer B should have provided the AOS officers with timely and sufficient information to allow them to make their own assessments about whether urgent duty driving was required.

Officer B demonstrated poor practice in terms of his decision making and AOS call-out procedures.

Officers E and G were justified in urgent duty driving when responding to this incident.

Subsequent Police Action

54. Police investigated and decided that Officer B would not be charged with any speeding offence. Police also undertook an employment investigation which concluded that Officer B was unjustified in speeding under urgent duty driving to the pre-planned briefing and his actions brought Police into disrepute.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

30 March 2021

IPCA: 20-3256

Appendix – Laws and Policies

LAW

Search and Surveillance Act 2012

55. Police policy on warrantless searches is derived from the law, in particular, the Search and Surveillance Act 2012 ('the Act').
56. Section 8 of the Act allows Police to enter a place or vehicle without a warrant, and search for and arrest a person that they suspect has committed an offence punishable by imprisonment. Police must believe that the person was there, and that if they do not enter the place or vehicle immediately, the person will leave to avoid arrest or evidential material relating to the offence will be destroyed, hidden, altered or damaged. Police can only search for property under section 8 if they arrest the alleged offender.
57. Section 15 of the Act allows Police to enter a place without a warrant and search for evidence, whether or not the offender is there. To rely on this, Police must suspect an offence has been committed which is punishable by imprisonment for 14 years or more and believe that the evidence is at the place and will be destroyed, concealed, altered or damaged if entry is delayed to obtain a search warrant.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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



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