



# Report on a Police pursuit in Auckland on 20 March 2009 resulting in the death of Robert Alaiula

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. At approximately 3am on 20 March 2009 a stolen Subaru Forrester station wagon driven by Sunia Sika, aged 15 years, crashed following a short Police pursuit in West Auckland. Robert Alaiula, aged 14 years, a back seat passenger, died at the scene. Two other passengers, both aged 15 years, were seriously injured. The driver was uninjured.
2. The Police notified the Independent Police Conduct Authority of the pursuit, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings based on a very full report and thorough investigation.

## BACKGROUND

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### Summary of events

3. Police responded to a report that intruders had been disturbed breaking into an occupied home in Laingholm, West Auckland.
4. Constables A and B, in a uniform patrol vehicle being driven by Constable A, were instructed to take up a stationary position in Titirangi village and stop vehicles travelling from Laingholm.
5. Constables A and B were in that position when three cars, appearing to be travelling in convoy, approached. They started to follow the cars and elected to stop the second vehicle, a Subaru.
6. Constable A activated the flashing lights and siren and the Subaru turned into a car park and appeared to be stopping. The officers also pulled into the entrance to the car park and attempted to block the Subaru's exit.

7. As they did so, the Police report that the Subaru suddenly did a manoeuvre similar to a three-point turn “*over a couple of bumps*” and accelerated across and out of the car park. The officers followed and commenced a pursuit. Constable A reactivated the flashing lights and siren.
8. Sunia Sika later said that he and his friends wanted to run from the Police because they were scared and he did not have a licence. He said that he had been encouraged by his friends to drive away from the Police.
9. The officers pursued the Subaru along Titirangi Road towards New Lynn. Because of the speed at which Sunia Sika was driving, he failed to negotiate the roundabout at the intersection of Titirangi Road and Golf Road and the Subaru veered onto the incorrect side of the road, hitting a concrete power pole and then a tree.
10. The distance from where the Police first encountered the Subaru to the intersection of Titirangi and Golf Road, where it crashed, is 1.7kms.

#### **Parents’ Concerns**

11. Robert Alaiula’s parents raised several concerns with the Authority’s investigator:
  - that the Police did not block off the exit to the car park to prevent the boys driving off;
  - that it is not possible to drive from the Titirangi village to where the fatal crash occurred in 47 seconds;
  - that the officers involved did not wait for other officers to stop the car further along Titirangi Road; and
  - that the pursuing officers were “new” to the job.
12. These concerns have been addressed under the appropriate headings in this report.

#### **Pursued Car Driver and Occupants**

13. The Subaru had been stolen on or about 17 March 2009 and is known to have been in Robert Alaiula’s possession since then.
14. Sunia Sika was charged with reckless driving causing death, reckless driving causing injury, failing to stop for red and blue flashing lights and receiving a motor vehicle. He pleaded guilty to all charges.
15. No evidence was found to connect the Subaru’s occupants with the burglary at Laingholm, nor to confirm that they were travelling in convoy with any other vehicles.

### Environment

16. It was a dry night. The road conditions were good and there was no other traffic.
17. Titirangi Road is winding in parts and has a speed limit of 50kph. It is unsuitable for high speed.

### Cause of Death

18. The pathologist concluded that Robert Alaiula's death "*resulted from head injuries*". He said that "*the injuries were immediately fatal*". An inquest into his death has not yet been held.

### Toxicology

19. There was no indication of alcohol in blood taken from Sunia Sika or Robert Alaiula.

### Police crash analysis

20. The Subaru had a current warrant of fitness. No faults were evident with the brakes, steering, suspension or throttle operation.
21. There was no indication that the road surface contributed to Sunia Sika losing control.
22. The investigation established that only the driver of the car was wearing his seatbelt.
23. The Serious Crash investigator concluded, "*The loss of control of the Subaru as it exited the roundabout is directly related to the speed the vehicle has been travelling when negotiating the roundabout.*"

### Police Driver and Passenger

24. Constable A and his patrol vehicle were appropriately classified to undertake pursuits under the Police Professional Driver Programme.
25. Breath testing of officers who are not directly involved in a crash is voluntary. Constable A agreed to be breath tested following the crash and the result was negative.
26. The Authority has recommended that Police develop a practical and appropriate protocol for alcohol testing of officers involved in critical incidents.
27. Constable B was relatively junior in service. The Authority is satisfied that he was appropriately qualified to carry out his role and that his level of experience had no bearing on the overall outcome of this matter.

## LAWS AND POLICIES

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28. Under the Land Transport Act 1988, the Police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, the Police are empowered to stop vehicles in order to conduct a statutory search or when there are reasonable grounds to believe that an occupant of the vehicle is unlawfully at large or has committed an offence punishable by imprisonment. Where such a vehicle fails to stop, the Police may begin a pursuit.
29. Under the Police pursuit policy, an officer who commences a pursuit must have undertaken a risk assessment, which involves consideration of a range of factors including speed and other behaviour of the pursued vehicle, traffic and weather conditions, the identity and other characteristics of the people in the pursued vehicle, the environment, and the capabilities of the Police driver and vehicle. The officer must then determine whether *“the immediate need to effect immediate apprehension of the offender is outweighed by the risks posed by a pursuit to the public, the occupants of the pursued vehicle, or police”*.
30. The policy also sets out requirements for information to be provided to the nearest Police communications centre, such as the reason for the pursuit and the location and direction of travel; roles and responsibilities of all staff involved; tactics which may be used; and procedures for abandoning and restarting pursuits.
31. Throughout a pursuit, Police must continue to assess the risks involved and they must abandon it if the risks to safety outweigh the immediate need to apprehend the offender.

## THE AUTHORITY'S FINDINGS

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### **Commencement of pursuit**

32. The officers had legal authority to stop the Subaru. They had been deployed to apprehend burglars and directed to stop vehicles coming from the area in which a serious offence had occurred.
33. Constable B said that they were following the third car in a convoy when the second car indicated to turn right into Rangiwai Road, prompting them to elect to stop that car. The driver of the second car was young and in the officer's view looked *“suspicious”*.
34. Sunia Sika was aware that the Police wanted him to stop and that the flashing lights and siren required him to stop. He failed to do so.

## FINDING

The officers were justified in commencing a pursuit.

**Communication by the pursuing officers**

35. Constable B advised the Police Northern Communications Centre (NorthComms) that they were “*chasing*” a vehicle on Titirangi Road and provided the registration number of the vehicle.
36. Officer B should then have conveyed to NorthComms the exact reason for commencing the pursuit.
37. Constable B’s first notification to NorthComms of their location was “*on Titirangi Road just past Highland Avenue*”. The pursuit had in fact commenced in Rangiwai Road, 1.5kms earlier. There was a delay in Constable B making contact with NorthComms because the NorthComms dispatcher was responding to another unit whilst Constable B was trying to get through.
38. Constable B then notified NorthComms that the weather was dry but then immediately reported, “*He’s lost control Comms, hurry, we need an ambulance here Comms.*”
39. The time between the first call to NorthComms and the transmission that the Subaru had lost control was 47 seconds.
40. The delay in making contact and the short duration of the pursuit precluded Officer B providing NorthComms with all the information required under the policy, in particular the reason for commencing the pursuit.
41. The delay in making contact with NorthComms explains Mr Alaiula’s parents’ concern about being misinformed that the officers travelled from the Titirangi village to the crash site in 47 seconds.

## FINDING

Communication with NorthComms did not comply strictly with pursuit policy in that the reason for the pursuit was not provided and there was a delay in notifying NorthComms of their location due to heavy radio traffic.

**Speed and manner of driving of Police vehicle**

42. The pursuit policy requires officers to drive in a manner that prioritises the safety of the public and staff.
43. Constable A estimated that he reached a speed of 130kph on a downhill straight of Titirangi Road.

44. The constable said that it was “*a nice straight bit of downhill road and it was nice and dry, the vehicle was perfect [in its handling]*” and reported that the closest they got to the pursued vehicle was 100 – 150 metres. He said that this distance was at the conclusion of the pursuit when he rounded a bend and witnessed the pursued vehicle lose control and crash. The constable estimates that he was some 300 metres from the pursued vehicle at the commencement of the pursuit.
45. The constable further stated that there was only one other car on the road at the time of the pursuit and it turned off Titirangi Road into Godley Road at the beginning of the pursuit.
46. Despite the vehicle’s occupants being possible suspects for a serious offence, pursuing at speed and closely behind the pursued vehicle compromised safety.
47. Speed calculations based on the tyre friction marks at the scene indicate that the Subaru was most likely travelling between 82 and 107kph prior to the crash.

**FINDING**

Constable A’s speed and following distance were highly undesirable.

**Oversight of the pursuit by NorthComms**

48. Under the pursuit policy NorthComms was required to give the warning: “*If there is any unjustified risk to any person you are to abandon pursuit immediately. Do you understand?*”
49. There was no realistic opportunity between the initial notification and the crash to give the safety warning or for the NorthComms inspector to take control.

**FINDING**

NorthComms did not have the opportunity to provide the standard warning.

The NorthComms inspector did not have time to take control of the pursuit.

**Consideration of abandonment**

50. Whilst the registration number of the Subaru was provided to NorthComms, there was insufficient time to check it with a view to abandoning the pursuit and apprehending the occupants later. The pursuing officers did not know whether the Subaru had been stolen and having started the pursuit, did not turn their minds to abandonment during its short duration.
51. After the crash it was established that the car had been stolen, therefore the registration number would not have led to the identification of the driver.

52. There was no opportunity for other Police cars to get into position to stop the Subaru further down Titirangi Road. Based on his previous driving, it is unlikely that Sunia Sika would have stopped for another Police car.

#### FINDING

The officers had little time to, and did not, consider abandoning the pursuit.

#### CONCLUSIONS

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53. The decision to commence the pursuit was justified in law and complied with the Police pursuit policy.
54. However, the pursuing Police driver reached an unacceptably high speed during the pursuit and followed unnecessarily close to the pursued driver. The officer's driving was a potential danger to innocent third parties on the road and he could not gauge the effect of being pursued on the inexperienced driver.
55. The crash resulted from Sunia Sika driving at speed and his consequential inability to control the vehicle.
56. The manner of Police driving was not causative of the outcome.

#### RECOMMENDATIONS

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57. The Authority reiterates its recommendations in earlier reports that Police develop policy and procedures for compulsory drug and alcohol testing of officers involved in critical incidents.
58. Routine testing of officers involved in critical incidents would be of benefit to Police in that it would indicate a willingness on their part to police its own ranks and would protect Police officers from malicious or unfounded allegations of substance abuse.
59. Police General Instructions require drivers of "all vehicles" involved in a fatal or potentially fatal crash be breath or blood tested. The Auckland Coroner has suggested that this policy might extend to include Police drivers, as they can be viewed as "involved drivers" in such cases.

PURSUIITS REVIEW

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60. On 13 October 2009 the Authority released a review of Police pursuits, recommending that clearer guidance be provided in respect of the justification for commencing and continuing a pursuit.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

26 November 2009



# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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 chaired by a High Court Judge and has two other members.

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 has two investigating teams, made up of highly experienced investigators who have worked in a range of law enforcement roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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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;
- 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 can make findings and recommendations about Police conduct.



**IPCA**

Independent Police Conduct Authority  
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