



# Fatal Police pursuit of Leith David Barnes

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. At 4.24pm on 13 January 2010 a motorcycle ridden by Leith David Barnes, aged 28, crashed during a Police pursuit in Newlands, Wellington. Mr Barnes died at the scene.
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.

## BACKGROUND

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### Summary of events

3. During January 2010, Leith Barnes, from Pleasant Point, Timaru, was on a solo road trip of the North Island on his motorcycle. On Wednesday 13 January 2010 Mr Barnes was travelling through Wellington in order to catch a ferry to return to the South Island.
4. At about 4pm on 13 January 2010, Officer A was on speed enforcement duty on State Highway 1 just north of Johnsonville, Wellington. He was the sole occupant of a marked highway patrol car parked, facing south, on the left side of the highway.
5. Officer A was using a rear facing radar device to detect speeding vehicles and was using his rear vision mirror to view the approaching vehicles.
6. At approximately 4.15pm, Officer A saw a motorcycle approaching. He assessed the motorcycle to be exceeding the speed limit of 100kph and used the radar device to lock in the motorcycle's speed at 121kph.
7. State Highway 1 at this point has two lanes in each direction. The motorcycle was in the right south-bound lane.

8. As Mr Barnes rode past, Officer A was unable to obtain the registration number. The officer activated his red and blue warning lights then waited 8 – 10 seconds until it was safe for him to pull out into traffic.
9. Officer A crossed to the right lane where he could see the motorcycle ahead. He then turned on his siren. Officer A lost sight of the motorcycle before the Grenada Village off-ramp, but saw it again just before the straight leading to the Johnsonville off-ramp, Officer A estimated that the motorcycle was about 700 – 800 metres ahead and that he was following at between 145 and 150kph to try to close the gap.
10. At this stage, Officer A was not sure if Mr Barnes had seen him and did not consider that he was in pursuit. He was however engaged in ‘urgent duty driving’, and was therefore permitted to drive in the manner that he did (see paragraph 60 for a definition of urgent duty driving).
11. Officer A again lost sight of the motorcycle just before the Johnsonville off-ramp. Since he could not see the motorcycle ahead on the highway, he assumed that Mr Barnes had taken the off-ramp. He also took the off-ramp and drove into Johnsonville.
12. On reaching the roundabout at the northern entrance to Johnsonville, Officer A saw the motorcycle about 60 or 70 metres along the main street, Johnsonville Road, behind a line of cars. Officer A thought that Mr Barnes was stationary or travelling very slowly.
13. The red and blue warning lights and siren were still activated on Officer A’s patrol car.
14. Officer A saw Mr Barnes look into his rear view mirror, then pull out of the line of traffic and ride ahead. In interview, Officer A said: *“At that point, I realised he had crossed the threshold and began an active movement to get away from me okay and that’s when I deemed that a pursuit commenced.”*
15. Four witnesses estimate Mr Barnes travelled in excess of 100kph through the 50kph limited Johnsonville shopping area. These witnesses state that they saw Mr Barnes drive through red traffic signals at a pedestrian crossing and at the intersection of Johnsonville and Broderick Roads. In interview, Officer A said that he thought Mr Barnes could have reached a maximum speed of 90 – 100kph through the shopping area.
16. Eight witnesses who saw Mr Barnes and Officer A drive through Johnsonville described Officer A’s driving as being *“slower and safer”* than Mr Barnes’. The distance between the two vehicles was variously described by the witnesses as between 5 and 30 seconds, 6 to 7 car lengths, and up to 200 – 300 metres.
17. Officer A said that at that point he tried to contact the Police Central Communications Centre (CentComms) to advise that he had commenced a pursuit, however the radio was busy.

18. The officer said in interview that the motorcycle *“had a reasonably clear run”* along Johnsonville Road and was travelling at least 70 – 80kph, in a 50kph speed zone, at the Broderick Road intersection. He said further that he assessed the risk and: *“I deemed it wasn’t an unjustified risk okay and I deemed it prudent to continue.”*
19. Officer A said that he thought that at this point he had tried once more to contact CentComms, but the radio was again busy and he could not get through.
20. Mr Barnes travelled along Johnsonville Road, into the tunnel under Centennial Highway and back out onto Johnsonville Road and on to the off-ramp to the suburb of Newlands.
21. As he followed the motorcycle towards Newlands, Officer A said that he tried to contact CentComms for the third time, but still could not get through. Officer A says that the motorcycle slowed to about 50 – 60kph as Mr Barnes took the bend from the off-ramp onto Newlands Road. At this stage he was about 200 – 300 metres ahead of Officer A. Newlands Road has a 50kph speed limit.
22. Going up the slight incline of Newlands Road, Mr Barnes was initially held up by a line of traffic waiting for a bus to turn into the Newlands Coach Services depot. However he quickly negotiated his way around the cars and sped ahead up the hill. CCTV footage from the front of the coach depot shows that Mr Barnes was outside at 4.20:14pm and the Police car was 5 seconds behind.
23. The transcript of radio transmissions from CentComms shows that Officer A radioed in the pursuit at 4.20:18pm when he was on Newlands Road, saying: *“[call sign] can you log a pursuit please.”*
24. The CentComms dispatcher replied: *“Roger. If there is any unjustified risk to any person you are to abandon pursuit immediately. Acknowledge?”* Officer A immediately acknowledged the warning, and reported that the pursuit was travelling north on Newlands Road at a speed of 100kph. Shortly afterwards, Officer A advised that he was pursuing a motorcycle and that he was unable to obtain the registration number. (See paragraph 58 for detail on the role of the dispatcher.)
25. Three witnesses who saw Mr Barnes at this stage estimated that he was travelling at about 120 – 130kph in a 50kph speed zone. The witnesses said that the Police car was travelling at approximately the same speed as the motorbike. One witness said: *“The way the motorbike was driving it was clear that the rider had no intention of stopping for the police car, he was just going for it trying to get away.”*
26. Officer A said that he re-assessed the risks involved in the pursuit as he continued up Newlands Road. He said he was cognisant of the fact that Newlands Road is quite wide, so no cars had to take evasive action to get out of Mr Barnes’s way; that there was little

- vehicle traffic; that there was no pedestrian traffic and that Newlands School, on Newlands Road had finished for the day.
27. Several witnesses saw the pursuit further along Newlands Road. They estimated the speed of both the motorcycle and the Police car to be between 80 – 100kph. Two of the witnesses described the motorcycle as revving quite hard.
  28. Officer A said that Mr Barnes rode the motorcycle the wrong way around the roundabout at the intersection of Newlands Road, Bracken Road, and Horokiwi Road West, however there was no other traffic coming into the roundabout. Mr Barnes had decreased his speed to 50kph. This information was not passed to CentComms.
  29. Mr Barnes continued into Horokiwi Road West. Two witnesses who were driving up the hill of Horokiwi Road West were overtaken by Mr Barnes. They described how Mr Barnes crossed the double yellow lines on a blind corner. They said the Police car was between 2 – 4 seconds behind Mr Barnes and not travelling as fast.
  30. In his statement, Officer A confirmed that Mr Barnes had cut the corner and driven over double yellow lines. He was, in the opinion of Officer A, *“straightening the corner out”*. This information was not passed to CentComms.
  31. Another motorist on Horokiwi Road West saw Mr Barnes *“racing up behind me”*. The witness estimated Mr Barnes’ speed to be close to 80kph. He pulled over to let Mr Barnes past and then looked in his rear view mirror and saw the Police car about 200 metres behind. He said: *“I knew that the Police car was in pursuit but it was not any closer than 200m and the driver of the Police car was not pushing the motorcyclist.”*
  32. As the pursuit approached the intersection of Pinkerton Road and Horokiwi Road West, Officer A got to within 50 metres of the motorcycle; however he was still unable to read the registration plate. Just after Pinkerton Road, Mr Barnes sped up again, estimated by a witness to be over 100kph and Officer A fell behind.
  33. At 4.21:08pm and 4.21:24pm CentComms asked Officer A the reason for the pursuit. At 4.21:28pm Officer A replied: *“Excess speed over. Still behind him. Horokiwi Road West approaching Baden drive. (pause) Approaching Woodridge. (pause) coming into Ladbroke Road (pause) speed 80k’s. He’s going towards the old landfill over.”*
  34. At this point the dispatcher notified the pursuit controller, who then took control of the pursuit for one and half minutes, until Mr Barnes crashed. (See paragraph 59 for details of the role of the pursuit controller.)
  35. Mr Barnes turned right into Ladbroke Drive. There were no further witnesses to his or Officer A’s driving. Officer A said that he did not recall any other traffic in Ladbroke Drive and said that initially Mr Barnes slowed to 50 – 60kph and then sped up again.

36. Officer A said Mr Barnes: *"...was making what I judged to be reasonably informed decisions. I saw him go around the bend out of view."* The officer said he was about four seconds behind Mr Barnes, and that when he rounded a bend in Ladbroke Drive he could no longer see the motorcycle.
37. At 4.22:44pm Officer A radioed CentComms saying: *"Comms [callsign], I've lost him (inaudible) .....Ladbroke Road by the landfill."* Officer A advised that he suspected the motorbike had taken one of the walking tracks that come off Dennis Duggan Park. One minute and 40 seconds later, Officer A radioed NorthComms advising that he had found the motorcycle, that the rider had come off his bike and that he had gone over a cliff and fallen onto the park.
38. Unseen by Officer A, Mr Barnes had failed to take a corner, hit the curbing and fallen down a bank onto Denis Duggan Park. The crash was witnessed by people in the park carpark and in the park. One witness in the park heard the Police siren, looked up, and saw Mr Barnes and the motorcycle coming over the bank. Another witness said: *"It looked to me like the driver made no attempt to drive around the corner. It looked like the driver was deliberately trying to drive his motorbike from the road, off the grassy bank and onto the grass area. The motorbike never slowed down at all."*
39. CentComms asked if an ambulance was required. Officer A replied affirmatively and advised that the rider was down and he was going to have a look. One minute later Officer A radioed that he needed an ambulance as soon as possible and that the rider was still breathing but unconscious.
40. Despite receiving CPR for 30 minutes from Officer A, other officers, then ambulance and fire staff, Mr Barnes died at the scene.
41. The pursuit, from Mr Barnes apparently becoming aware of the signal to stop on Johnsonville Road (see paragraph 14), to the crash, covered a distance of approximately 3.84 kilometres. CentComms was aware of the pursuit for the last 1.1 kilometres.

### **Environment**

42. At the time of the pursuit, the weather was fine and clear, with good visibility and a dry road.
43. Traffic was described by Officer A as light and pedestrian traffic minimal throughout the pursuit, other than through the Johnsonville shopping area.

### Police crash analysis

44. A Police Serious Crash Unit investigator attended the scene while Mr Barnes and his motorcycle were still in situ. He reported that the causative and related factors included:

- 44.1 Mr Barnes was licensed to drive a motor car (restricted) and a motorcycle (learner). The motorcycle licence permitted him to ride a motorcycle with an engine capacity up to 250cc. The Honda he was riding had a 900cc engine.
- 44.2 The road surface on the corner (which Mr Barnes failed to take) has adequate friction and is correctly cambered. The blind nature of the bend and the variable radius of the bend can be considered related factors.
- 44.3 As Mr Barnes rounded the sharp left hand bend he failed to maintain a normal cornering line and rode wide, leaving the seal to the right side of the road and riding over the kerb and onto the shoulder. He failed to maintain a safe driving line around the corner and as a result left the sealed surface on exiting the corner.
- 44.4 The motorbike travelled over the edge of a steep embankment and then flew through the air before hitting the ground at the base of the bank.
- 44.5 The speed calculated for the fall of the motorcycle was 84kph. The maximum speed achievable when rounding the bend prior to this was 95kph.
- 44.6 It is possible (probable) that Mr Barnes was braking, which would not be unreasonable given the circumstances, and was travelling too fast for the corner, running wide as a result. It is also possible he focused on the approaching drop off and in doing so ended up steering off the edge.
- 44.7 The Honda motorcycle had a current warrant of fitness but also had several defects which should have prevented it from having a warrant, however none of these faults would have affected its operation.

### Leith Barnes' driving history

45. Leith Barnes' identity was not known during the pursuit.
46. Mr Barnes had received five infringement notices between 2001 and 2005 which attracted 20 demerit points each. Four of these notices were for exceeding the speed limit.
47. During his road trip, when speaking with a friend by phone, Mr Barnes told him that when he was riding near Norsewood, north of Dannevirke, doing 140 – 145kph, he came across a policeman. Mr Barnes said that he “*shot through*” and went through a back road to get to Napier. According to the friend, Mr Barnes was worried that he would now be a “*wanted man*”.

### Toxicology

48. There was no evidence of alcohol, medicinal, or illicit drugs in samples of blood and urine taken from Mr Barnes.

### Cause of death

49. The pathologist concluded that the cause of Mr Barnes' death was blunt force injury to the chest, consistent with him landing heavily after a significant fall down an embankment after losing control of his motorcycle.

## LAWS AND POLICIES

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### Legislative authority for pursuits

50. Under the Land Transport Act 1998, 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.

### Police pursuit policy<sup>1</sup>

#### Definition

51. A pursuit occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver.

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<sup>1</sup> The Police policy in place at the time of this incident was called the pursuit policy. On 18 October 2010 the pursuit policy was replaced by the fleeing driver policy. All references to Police policy in this report relate to the pursuit policy unless otherwise stated.



### *Overriding principle*

52. Under the Police pursuit policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

### *Risk assessment*

53. Under the Police pursuit policy, before commencing a pursuit an officer is required to first undertake a risk assessment. This involves consideration of the speed limit and manner of driving by the offending vehicle, identity and other characteristics of the occupants of the offending vehicle, weather conditions, the environment, traffic conditions, and capabilities of the Police driver and vehicle. The officer must then *“determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

54. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.
55. 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.

### *Communication requirements*

56. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 24, which the pursuing officer must acknowledge. The pursuing officer must provide information about the pursued vehicle, its location and direction of travel, and the reason for pursuit. The communications centre must prompt for information about speed, road and traffic conditions, weather, the offender’s manner of driving and identity, and the pursuing officers’ driver and vehicle classifications.

### *Roles and responsibilities*

57. Under the policy, the driver of a Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, comply with all directions from the pursuit controller (i.e. the shift commander at the Police communications centre), and comply with all directions from a Police passenger if the passenger is senior in rank or service.



58. The dispatcher at the Police communications centre must maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 24, and communicate instructions from the pursuit controller.
59. The pursuit controller (i.e. the shift commander at the communications centre) is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics. When a shift commander is unavailable, a communications centre team leader may take over as pursuit controller.

### *Urgent Duty Driving*

60. Urgent duty driving is defined as occurring when:

*“...an officer on duty is **either**:*

- *responding to a critical incident*
- *apprehending an offender for a traffic or criminal offence*
- *engaged in a pursuit; or*
- *engaged in activities approved by the commissioner in writing*

***and** to comply with traffic rules and regulations would prevent the execution of that duty [emphasis in original].”*

## THE AUTHORITY’S FINDINGS

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### **Commencement of pursuit**

61. Officer A and his marked patrol car were appropriately classified to undertake pursuits under the Police Professional Driver Programme. Officer A was a ‘gold’ rated driver.
62. Leith Barnes was signalled to stop for a traffic infringement under section 114 of the Land Transport Act 1988. Because he failed to stop, Officer A had the authority to commence a pursuit.
63. The reaction of Mr Barnes, once he became aware of the signal to stop on Johnsonville Road, was to weave in and out of traffic and then accelerate away in an attempt to avoid apprehension.
64. At that point Officer A assessed the risk factors involved in pursuing, including the speed of the motorcycle and the density of traffic (see paragraph 18). Officer A deemed that the risk involved in pursuing Mr Barnes was justified and that it was prudent for him to continue.

**FINDING**

Officer A complied with the law and with Police pursuit policy in commencing the pursuit.

The officer considered the relevant risk factors and formed the view that the immediate need to apprehend the offender outweighed the risks.

**Communication by the pursuing officer**

65. Officer A did not attempt to notify CentComms until he considered that he was in fact in pursuit, rather than simply engaged in urgent duty driving (see paragraphs 10, 14 and 60).
66. Officer A said that he attempted to contact CentComms on three occasions to advise he was in pursuit, however each time the radio was busy and he was unable to transmit. The officer also said that he found it difficult to transmit with one hand while driving with the other.
67. The CentComms record shows that, prior to the pursuit being logged, the dispatcher was dealing with another event and other patrols were responding. There were gaps in the transmissions and therefore opportunities for Officer A to log the pursuit. However Officer A was driving at speed and it is accepted that it may not have been safe for him to operate the radio at these times.
68. Officer A eventually advised CentComms that he was in pursuit when he was on Newlands Road, approximately 2.8 kilometres after the pursuit had commenced. CentComms gave him the safety warning required under the pursuit policy (see paragraph 24), and Officer A acknowledged the warning (see recommendation at paragraph 89).
69. Officer A gave CentComms information about the location, direction of travel, speed and reason for the pursuit, but did not pass on information relating to how long he had already been in pursuit, or in relation to Mr Barnes' manner of riding.
70. Mr Barnes' manner of riding, as described by witnesses, was clearly intended to evade apprehension. He went through two red traffic lights; his speed was generally well over the limit; he went around a roundabout on the wrong side and remained on the wrong side for a short time; he overtook a car on double yellow lines; overtook on a blind corner; and cut a blind corner.
71. It is accepted that Officer A did not have Mr Barnes in view for the entire pursuit. He did however have a sufficient view of matters to have required him to communicate more

information to CentComms, so that the risks associated with continuing the pursuit could be properly assessed.

72. Additionally, communications from Officer A to CentComms were at times inaudible. Because of this, crucial information was not received by CentComms. It is not known whether this was caused by Officer A not operating the radio correctly, or if there was a technical problem.

**FINDING**

Officer A did not provide CentComms with all the information required under the pursuit policy.

**Speed and manner of driving**

73. Officer A's driving was witnessed by numerous people throughout the pursuit. Most of them praised his driving and his speed.
74. The majority of the witnesses said that Officer A's car was more than 100 metres behind the motorcycle, although witnesses along Horokiwi Road West put the distance as two car lengths. Officer A said that at this point the motorcycle had slowed and he was trying to get close enough to read the registration plate.

**FINDING**

Officer A complied with the pursuit policy in relation to speed and manner of driving.

**Oversight of the pursuit by CentComms**

75. The called in pursuit lasted two minutes and 26 seconds (from the time CentComms was advised Officer A was in pursuit on Newlands Road, until the time of the crash). During this time the dispatcher carried out some of the required functions including issuing the required warning (see paragraph 24), confirming the reason for the pursuit and the location.
76. A significant portion of Officer A's transmissions were inaudible, especially when the pursuit was first called through, however CentComms did not seek clarification. The dispatcher did not, for example, ask for Officer A's driver certification or vehicle classification as required by policy.
77. It is accepted however that this was a relatively short pursuit and there was little time to obtain fuller information. CentComms had just clarified the location and were directing a dog unit to assist when Officer A reported: *"I've lost him."*

78. The dispatcher advised the pursuit controller of the pursuit when it was on Horokiwi Road West. The pursuit controller then oversaw the pursuit.

**FINDING**

Given its short duration, the pursuit was generally properly overseen by CentComms.

**On-going risk assessment and the option of abandoning pursuit**

79. Officer A said that he carried out his first risk assessment before the pursuit began. He determined, when on State Highway 1, that if Mr Barnes continued on the motorway – because of the distance between them and the speed needed to close the gap – he would not attempt to catch him.
80. Officer A said that he made several risk assessments during the pursuit, primarily considering vehicle and pedestrian density, the location of a primary school, speed, distance and road width, and the manner of riding by Mr Barnes. He deemed that the risks involved in continuing the pursuit were justified.
81. Most of these factors, as well as the dangerous riding displayed by Mr Barnes, were not communicated to CentComms. Pursuit transmissions were compromised and did not cover the full pursuit, nevertheless Officer A should have been more pro-active in communicating risk factors.
82. Officer A did not consider abandoning the pursuit once it had commenced, nor was it considered by CentComms.
83. However, had all risk factors, from the pursuit's inception (see paragraphs 70 and 71), been communicated to CentComms by Officer A then the option of abandonment could have been considered by them.

**FINDING**

Officer A carried out ongoing risk assessments in accordance with policy, however he did not fully comply with policy in respect of communicating these risk factors to CentComms.

All risk factors, from the pursuit's inception, should have been communicated to CentComms so that the option of abandonment could have been considered as required by policy.

## CONCLUSIONS

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84. Leith Barnes demonstrated by his actions that he was prepared to take risks to avoid being caught by Police.
85. The pursuit was conducted largely in accordance with policy.
86. Officer A was in active pursuit of Mr Barnes for 2.8 kilometres before he was able to advise CentComms of the pursuit.
87. Officer A was alone and had difficulty driving at speed and operating the radio at the same time. Additionally, communications were compromised, either through poor radio practices or by technical difficulties. However, there was opportunity for Officer A to communicate risk factors to CentComms, and he failed to do this.
88. In terms of section 27(1) of the Independent Police Conduct Authority Act 1988:
  - The omission by Officer A to communicate fully the known risk factors to CentComms was undesirable.

## RECOMMENDATIONS

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89. Pursuant to section 27(2) of the Act, the Authority recommends that Police continue with the implementation of hands free technology in all operational vehicles.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

April 2011



# 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 four 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 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 must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.





**IPCA**

Independent Police Conduct Authority  
Whaia te pono, kia puawai ko te tika

**PO Box 5025, Wellington 6145**

**Freephone 0800 503 728**

**[www.ipca.govt.nz](http://www.ipca.govt.nz)**