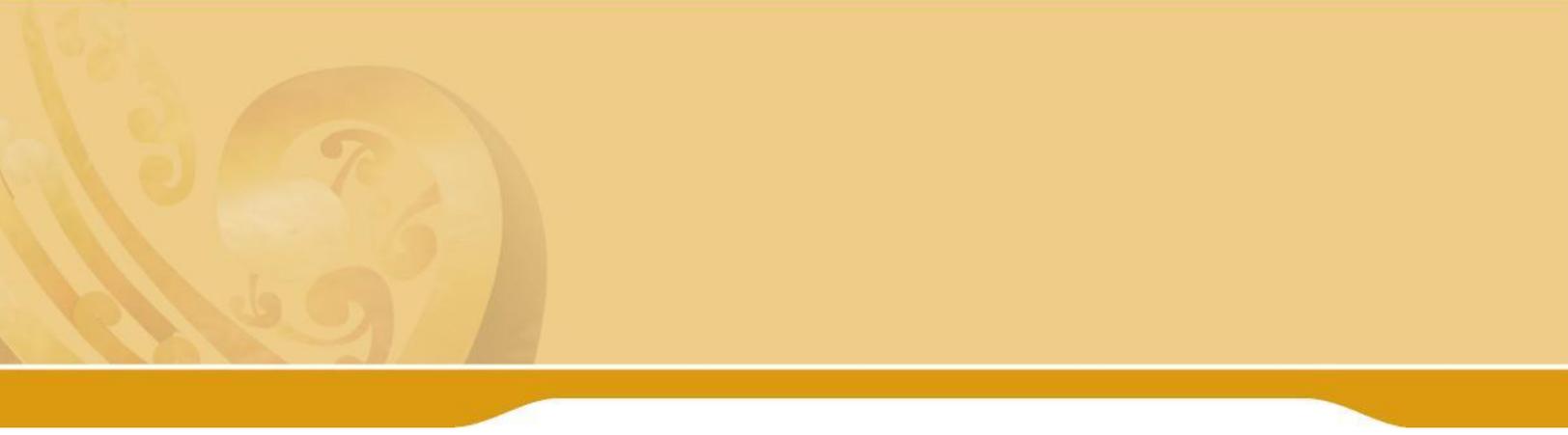




# Fatal Police pursuit of Harley Wilson and Michael Keepa

September 2012

**EMBARGOED:  
NOT TO BE PUBLISHED OR  
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IPCA  
Level 8  
342 Lambton Quay  
PO Box 5025  
Wellington 6145  
Aotearoa New Zealand  
0800 503 728  
P +64 4 499 2050  
F +64 4 499 2053  
[www.ipca.govt.nz](http://www.ipca.govt.nz)



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INDEPENDENT POLICE CONDUCT AUTHORITY

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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At around 5.34am on Friday 8 October 2010, a stolen Toyota Hilux Surf 4x4 vehicle driven by Harley Kendrick Sean Wilson crashed on Jellicoe Street in Te Puke, Bay of Plenty, following a Police pursuit. Mr Wilson, aged 21, and his passenger, Michael Adam Kai Keepa, aged 25, both died at the scene.
2. 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 and recommendations.

## Index of Officers

Communications Centre Staff	Comment
Dispatcher	Dispatched the event on the Tauranga channel Relayed instructions from the pursuit controller to the units involved
Pursuit controller	NorthComms shift commander Supervised the dispatcher and managed the pursuit

Field Staff	Roles	Comment
Officers A and B Marked patrol	Commenced pursuit on Maunganui Road Lead pursuit vehicle for stage 1 Abandoned pursuit on Papamoa Beach Road when ordered by NorthComms	Officer A had a gold licence Category A vehicle
Officers C and D Marked patrol	Deployed road spikes on Papamoa Beach Road	Officer C had a gold licence Category A vehicle
Officers E and F Marked patrol	Recommended pursuit on Domain Road Lead pursuit vehicle for stage 2	Officer E had a gold licence Category A vehicle
Officers G and H Marked patrol	Dog unit Lead pursuit vehicle for stage 3	Officer G had a gold licence Category A vehicle



# Executive Summary

INDEPENDENT POLICE CONDUCT AUTHORITY

3. The pursuit of the Toyota 4x4, driven by Mr Wilson, lasted for about 17 and a half minutes, and covered a distance of about 38.5 kilometres; it took place in three stages and involved an attempted use of road spikes during stage 1.
4. The Authority's investigation considered whether Police complied with the law and pursuit policy at each stage of the pursuit, specifically in relation to: the commencement and recommencement of the pursuit; communication; speed and manner of driving; and the ongoing risk assessment/abandonment.
5. In relation to the use of road spikes, the Authority considered whether Police complied with policy in relation to the use of road spikes, specifically in relation to: the pre-deployment vehicle check; the decision to use road spikes; selection of the deployment site; and the actual deployment.

## **Authority Conclusions**

6. Officers A and B were justified in attempting to stop Mr Wilson for traffic enforcement purposes. They later discovered that he was also driving a stolen vehicle.
7. Harley Wilson demonstrated by his actions that he was prepared to risk his life and the lives of others to avoid being caught by Police.
8. The pursuit comprised three different phases, and included an unsuccessful attempt to use road spikes to stop the fleeing Toyota 4x4.
9. Although the pursuing officers did consider the risks involved at each stage of the pursuit, the Authority has found that these risk assessments did not properly take into account the risk posed by the sustained high speed of the fleeing vehicle – particularly on roads with speed limits of 50 - 70 kph.
10. During stage 1, given the high speed and residential road, the pursuit should have been abandoned in the early stages when it reached speeds of 115 and 120 kph in a 50 kph area. Following this, there were several other reports of unacceptably high speed, which also should have led to the pursuit being abandoned.

11. Officers C and D should have carried out a pre-deployment check of their patrol car and the equipment carried in it before leaving the Police station.
12. During stage 2, the officers and the pursuit controller should have abandoned the pursuit once they realised that Mr Wilson had recommenced driving far in excess of the posted speed limit and had no intention of stopping for Police.
13. During stage 3, given the clear risk factors, the pursuit should have been abandoned before it reached the 70 kph speed zone on the outskirts of Te Puke.
14. The sustained high speeds reached by the pursuing officers were dangerous to the public, the occupants of the Toyota 4x4 and the officers themselves.

### Section 27 opinion

15. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
16. Pursuant to section 27(1) of the Act, the Authority has formed the opinion that:
  - the failure by Officers A and B and the pursuit controller to abandon the pursuit during stage 1 was unjustified;
  - the failure of Officers C and D to carry out a pre-deployment check of their patrol car and the equipment carried in it was undesirable;
  - the attempted use of road spikes on a vehicle travelling at more than 100 kph by Officers C and D and the pursuit controller was undesirable;<sup>1</sup>
  - the failure by Officer E and the pursuit controller to abandon the pursuit during stage 2 was unjustified; and
  - the failure by Officer G and the pursuit controller to abandon the pursuit before it entered the outskirts of Te Puke was unjustified.

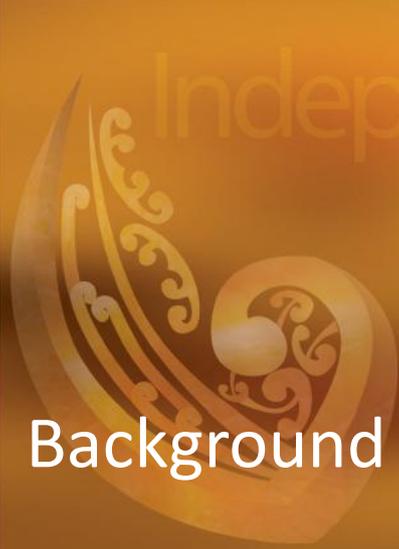
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<sup>1</sup> On 8 October 2010, both the pursuit policy and the tyre deflation devices policy stated that tyre deflation devices must not be deployed on vehicles travelling at more than 100kph, motorcycles and heavy vehicles. Both policies were amended in August 2011 to remove the restriction on the use of tyre deflation devices on vehicles travelling at more than 100kph. Police now only use the 'Stinger' tyre deflation device which causes a more controlled deflation of the vehicle's tyres and are safer to use at higher speeds.

### Section 27(2) recommendations

17. The Authority notes that the *Fleeing Driver* policy now requires officers to continually relay the applicable speed limits during a pursuit, and therefore makes no recommendation in that respect.
18. Pursuant to section 27(2) of the Act, the Authority recommends that:
  - all frontline and NorthComms staff involved in this pursuit be reminded of the risks of pursuing at such a high speed; and
  - all staff are reminded of the importance of carrying out a pre-deployment check of their patrol car and the equipment carried in it prior to use and of ensuring that the equipment carried is in a safe operating condition.





# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## SUMMARY OF EVENTS

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### Events prior to the pursuit

19. At about 2.30am on Wednesday 6 October 2010, a blue Toyota Hilux Surf 4x4 vehicle was stolen from a Levin home. The owner immediately reported the theft to the Police.
20. Harley Wilson and Michael Keepa drove the stolen Toyota to the Tauranga area to visit family and friends.
21. During the early hours of Friday 8 October 2010, Mr Wilson and Mr Keepa spent some time at a bar in Mount Maunganui. They left the bar at 4.10am and drove away in the Toyota. Mr Wilson was the driver and Mr Keepa was the front seat passenger.

### The pursuit

22. For ease of reference, the pursuit is divided into three stages.

#### *Stage 1*

23. On the morning of Friday 8 October 2010, Officers A and B were carrying out traffic alcohol duties in a category A marked patrol car in Mt Maunganui. Officer A was the driver and Officer B was responsible for operating the radio.
24. A category A vehicle is authorised to be the lead car in pursuits. Officer A is certified as a gold licence holder and is trained under the Professional Police Driver Programme (PPDP), and therefore is competent to engage in pursuits as the lead driver.
25. At around 5.15am, Officers A and B were parked on Maunganui Road near the intersection with Sutherland Avenue, facing south. Another patrol vehicle was parked further south on Maunganui Road with its warning lights flashing.

26. Officer A saw a blue Toyota Hilux Surf 4x4 vehicle (the Toyota) approaching in his rear view mirror. The Toyota's driver (Mr Wilson) indicated left and pulled over to the side of the road, which caused Officer A to suspect that he was trying to avoid the Police.
27. Officer A turned left into Sutherland Avenue and completed a u-turn back onto Maunganui Road so that the officers' patrol car was now facing north, towards the Toyota. Mr Wilson then pulled back out onto the road without indicating and recommenced driving south on Maunganui Road. At this point Officer B also noticed the Toyota, and saw that the driver appeared to be exceeding the speed limit of 50 kph. The officers decided to stop the Toyota and conduct a breath alcohol test on the driver.
28. Once the driver of the Toyota had passed the patrol car, Officer A completed another u-turn in order to get behind it. He activated his patrol car's warning lights and siren to signal the driver of the Toyota to pull over and stop. Mr Wilson failed to stop and accelerated away from the patrol car, reaching an estimated speed of over 80 kph in a 50 kph zone.
29. Officers A and B considered the risks involved in conducting a pursuit, and concluded that the risks were low because there was very little traffic and the road was dry and in good condition. The officers decided to pursue the Toyota.
30. At approximately 5.16:20am,<sup>2</sup> Officer B radioed the Police Northern Communications Centre (NorthComms) and advised the dispatcher that a vehicle had failed to stop for Police on Maunganui Road, heading south towards Te Puke.
31. The dispatcher immediately alerted the NorthComms shift commander (the pursuit controller) that a pursuit had been commenced. Throughout the ensuing pursuit the dispatcher was supervised by the pursuit controller and relayed his instructions to the Police staff involved.
32. The dispatcher asked for the pursued vehicle's registration number, which Officer B provided. Officer B then told the dispatcher that they were travelling at 115 kph on Maunganui Road.<sup>3</sup> The speed limit was 50 kph, but Officer B did not tell this to the dispatcher and the dispatcher did not ask.

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<sup>2</sup> This time and the following times stated in this report are approximations based on the NorthComms event chronology and the recording of the radio transmissions for this pursuit.

<sup>3</sup> The speeds reported to NorthComms during this pursuit are the speeds of the lead police vehicle. They are also the approximate speeds of the Toyota.

33. Police pursuit policy requires that once a pursuit has been commenced, the communications centre dispatcher must give the warning, *"If there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge."*
34. After confirming the location of the pursuit, the dispatcher issued the required warning and Officer B acknowledged it. The dispatcher then asked the reason for the pursuit. Officer B said: *"121 kilometres [per hour], vehicle staying within its lane, vehicle's two up."* The dispatcher repeated her request for the reason for the pursuit, and after a short delay Officer B replied: *"Speed on Maunganui Road"*.
35. At about 5.17:37am, Officer B advised NorthComms that the Toyota was slowing down for the roundabout at the intersection of Maunganui Road and Hewletts Road. Just south of the Hewletts Road roundabout, Maunganui Road becomes State Highway 2 and the speed limit increases from 50 to 70 kph. Officer B did not report this change or the next few changes in the posted speed limit to NorthComms.
36. Officer B told the dispatcher: *"Through the roundabout. Passing BP towards Te Puke, speed is 96. Vehicle still travelling within its lane. Conditions are fine. Approaching the roundabout at Girven Road. Speed is 136 kilometres an hour."*
37. In the meantime, Officers C and D, who were at the Mount Maunganui Police station, heard the pursuit begin over the Police radio. The dispatcher asked whether they were going to attend this incident and they confirmed that they would. They left the station and began driving towards the location of the pursuit in a category A marked patrol car. Officer C was the driver and Officer D was responsible for operating the radio.
38. Officers C and D did not carry out any checks on the patrol car prior to leaving the Police station (see paragraphs 62, 160 and 204 - 206). Officer C has recently advised the Authority that Police officers are *"only trained to ascertain that the equipment was available"* and not to check that the equipment was in a safe operating condition. See the Authority's recommendation regarding the pre-deployment inspection process at paragraph 294.
39. At around 5.18:26am, Officer B advised NorthComms that the pursued vehicle was slowing down as it approached and then travelled through the Girven Road roundabout towards Te Puke, and that the speed was 96 kph. When asked, the officer confirmed for the dispatcher that the pursued vehicle was a Toyota Hilux Surf.
40. As the Toyota and the patrol car approached the intersection of State Highway 2 and State Highway 29, Officer B again described Mr Wilson's driving to NorthComms, saying: *"Vehicle is slowing for the intersection. Vehicle is overtaking a vehicle. Vehicle has overtaken two vehicles without indicating. Back in its own lane. Travelling at 134, we're on the State Highway heading towards Papamoa."*

41. Shortly after the intersection with State Highway 29, the speed limit on State Highway 2 increases to 100 kph. Officer B continued to describe Mr Wilson's driving to NorthComms, advising that the Toyota was passing two vehicles and that the speed was 147 kph. The patrol car was about 500 metres behind the Toyota at this time.
42. After ascertaining which other units were available to attend the pursuit, the dispatcher asked Officer B whether she and Officer A knew the identity of the driver. Officer B replied that they did not and reported that the pursuit had reached a speed of 151 kph.
43. At about 5.20:50am (four and a half minutes into the pursuit), the NorthComms dispatcher advised the pursuing units that the Toyota was registered to an address in Levin and had recently been reported as stolen. Officer B acknowledged this message.
44. As the Toyota 4x4 and the patrol car approached the roundabout at the intersection of State Highway 2 and Domain Road (which leads to Papamoa Beach), Officer B said: "We're travelling at 151, we're just approaching the roundabout for Te Puke. Vehicle is slowing, we have slowed down to 118. We're turning left into Papamoa. We are just passing Tara Road in Papamoa, we're travelling at 110." The speed limit at the intersection is 80 kph.
45. On Domain Road, the speed limit reduces to 50 kph. Papamoa Beach is a residential area and there are multiple side streets along Domain Road and Papamoa Beach Road, where the pursuit was headed. However there was very little traffic due to the time of morning and Officers A and B did not see any pedestrians.
46. At about 5.22:08am, Officer B advised NorthComms: "... we're travelling at 144 [kph], we're approaching the Papamoa Plaza. Speed limit here is 50 kph." The officer then reported that they had turned right at the Papamoa Beach Road roundabout (heading south on Papamoa Beach Road), and were now travelling at 109 kph.
47. Papamoa Beach Road is a long, straight road that comes to a dead end. The NorthComms dispatcher told Officer B: "... it will pretty much be a dead end down there unless they turn off." In a statement made six days after this pursuit the pursuit controller said:

*"I considered three possible avenues that the pursued driver could take at this point; namely; he could turn around and come back the way he had come, secondly he could dump the vehicle in one of the side streets and he and the passenger could decamp on foot and thirdly as he was in a Hilux 4x4 he had the option of driving onto the beach."*
48. The pursuit controller decided to let the pursuit continue, and to deploy road spikes in the event that the Toyota turned around and returned along Papamoa Beach Road.

49. The speed limit on Papamoa Beach Road increases to 60 kph a few hundred metres south of the intersection with Domain Road. At about 5.23:02am, Officer B advised NorthComms that they were travelling at 140 kph, but did not state the speed limit.
50. A Police dog unit (Officers G and H), who had just been notified about the pursuit, radioed Officer B and asked for her location. Officer B replied that they were on Papamoa Beach Road, heading towards Te Puke and travelling at 136 kph. The dispatcher then stated the Toyota's registration number for Officer G.
51. At around 5.23:57am, Officer B reported that they were *"heading towards the no exit"*. She advised that they had passed the intersection with Parton Road and were travelling at 138 kph. She also said that there were two people in the Toyota.
52. The dispatcher asked whether there was traffic in the area and Officer B replied: *"No nothing on the roads. Just passed one vehicle going in the opposite direction, there's nothing in our way."* Officer B also told the dispatcher that there were no pedestrians.
53. Meanwhile Officers C and D were driving to the area in order to assist with the pursuit (see paragraph 37). At about 5.24:40am, the NorthComms dispatcher radioed Officer D and asked for their location, which was Parton Road. The dispatcher then asked whether they had road spikes in their patrol car. Officer D replied that she was unsure.
54. The speed limit on Papamoa Beach Road reduces to 50 kph near the intersection with Calypso Drive.
55. At about 5.25:05am, Officer B reported that she and Officer A were travelling at 116 kph, and that they had *"just come past Thompson Drive. One vehicle on the road, just overtaken it safely. Vehicle we are chasing still in its own lane."*
56. The NorthComms dispatcher thought Papamoa Beach Road had a speed limit of 80 kph. At 5.25:21am she asked Officer B to: *"Confirm 80k area."* Officer B did not respond to this request. When interviewed by the Authority, Officer B said that she did not answer because she was busy relaying the Toyota's actions. The dispatcher did not repeat her request for Officer B to confirm the speed limit.
57. As described above, Papamoa Beach Road is actually governed by speed limits of 60 kph and 50 kph. At the time the dispatcher asked Officer B to confirm the speed limit, the officers were in the 50 kph speed zone.
58. The Toyota 4x4 reached the end of Papamoa Beach Road and slowed down to make a u-turn, turning back to travel north along the same road. At about 5.25:23am Officer B reported: *"Comms vehicle's braking. Comms we're at a dead end. Vehicle is turning round, heading back down Papamoa Beach Road, and our driver is a male Maori."* Officer A completed a u-turn and continued to follow the Toyota.

59. The pursuit controller's plan was to set up road spikes if the Toyota returned along Papamoa Beach Road. At 5.25:34am the dispatcher radioed Officers C and D and said: *"Try, if you've got spikes, set up Parton and Papamoa Beach."*
60. Officers C and D had already driven past the intersection of Parton Road and Papamoa Beach, so Officer D responded that they were going to set up the road spikes by the intersection with Kirkpatrick Place instead. Officer C believed that location would be more suitable because it would be less likely to have traffic than Parton Road. Officers C and D were still unsure about whether they had road spikes in their vehicle and only determined that they did have them once they had pulled over at Kirkpatrick Place.
61. At 5.25:55am, Officer B advised the dispatcher that they had slowed down to 107 kph. At the time the officers were still in the 50 kph zone, but NorthComms mistakenly believed that the applicable speed limit was 80 kph (see paragraphs 56-57). Officer B also reported that the Toyota had gone through a roundabout on the wrong side of the road, but was now back in its own lane with no other traffic on the road.
62. The dispatcher twice asked Officers C and D to confirm when they had set up the spikes but received no reply. When interviewed by the Authority, Officers C and D said they had retrieved the road spikes from their vehicle but found that the deployment rope was not attached. They did not answer the dispatcher because their attention was focused on making the road spikes operational.
63. At 5.26:33am, Officer B reported that the pursuit had just passed Palm Springs Boulevard at a speed of 128 kph. The dispatcher then requested Officers C and D's location and Officer D replied that they were at the intersection with Kirkpatrick Place. The dispatcher again asked whether they had set the spikes up, and at 5.26:51am Officer D replied: *"Deployed."*
64. Officers C and D had managed to attach the rope to the road spikes just as the siren from Officers A and B's patrol car could be heard approaching. Officer C moved to the intersection and threw the spikes out onto the road in front of the approaching Toyota 4x4. There was not enough time for the officers to cross the road and extend the spikes across both the lanes. The driver of the Toyota, Mr Wilson, swerved to the right and was able to avoid the spikes.
65. On the date of this incident, the Police policy on the use of tyre deflation devices stated that road spikes must not be used on vehicles travelling at more than 100 kph (see paragraph 162). At no time on Papamoa Beach Road was the Toyota 4x4 reported to be travelling at less than 107 kph. The most recently reported speeds of the Toyota were 116, 107 and 128 kph. In Police interview, the dispatcher said that she did raise the speed issue with the pursuit controller; however he did not give an order cancelling deployment. When interviewed by the Authority, the pursuit controller said he did not

recall hearing the dispatcher raise speed with him. This issue is discussed further at paragraphs 214-224.

66. Officer C was able to retrieve the spikes from the road before Officers A and B drove past. Officer B reported to the NorthComms dispatcher:

*“Vehicle has just swerved onto the wrong side of the road, he has continued driving on Papamoa Beach Road, travelling 135, he’s accelerating away from us. No other traffic on the road. 60 k area. We are now doing 153. He is within his own lane. No other traffic on the road.”*

67. After prompting from the dispatcher, Officer B clarified that the Toyota had not gone through the spikes but had swerved around them.

68. The pursuit controller decided to abandon the pursuit. When interviewed, he said that he made this decision because the road spikes had failed and there was no dog unit or aerial support available, which meant there were no remaining tactical options to end the pursuit safely.

69. At 5:27:40am the dispatcher ordered the officers involved in the pursuit to abandon. In accordance with Police policy, Officer B quickly replied that they had abandoned the pursuit, and had pulled over just before Alexander Place and turned off their warning lights and sirens.

70. In a statement made on the same day of the pursuit, Officer A said:

*“During the entire incident, from start to finish, I did not believe that the public or myself were in any danger. The driver of the 4WD drove well, stayed within his lane, and did not take unnecessary risks or drive dangerously other than his excessive speed. There was minimal traffic due to the time of the day. The roads were dry. At no stage did I feel that the pursuit should be abandoned. I would have stopped the pursuit myself if I felt that there was any danger to myself, the public, or to any other person.”*

71. Officer B said in her statement:

*“Throughout this Fleeing Driver incident apart from the excessive speed I at no time felt that the fleeing driver had lost control or was driving erratically... There was minimal traffic on the road, the weather conditions were fine and the road was dry. At no time did I feel as the Senior member of our patrol vehicle that we should abandon this incident.”*

72. In an interview with the Authority, the pursuit controller referred to the relatively straight roads, the light traffic volume and the lack of pedestrians as reasons why he had been happy for the pursuit continue until the point when the road spikes had failed to stop the Toyota 4x4.
73. This first stage of the pursuit lasted approximately eleven and a half minutes and covered a distance of about 25.5 kilometres.
74. At 5.28pm, the dispatcher advised all units to go into “*search mode*” (see paragraphs 154-156 for an explanation). Officer B acknowledged this message and reported that they could see the Toyota’s tail lights in the distance, continuing north along Papamoa Beach Road.

### *Stage 2*

75. Officers E and F had heard about the pursuit over the radio, and were urgent duty driving towards the Papamoa Beach area to assist when they heard the call to abandon.<sup>4</sup> Officer E was the driver and Officer F was responsible for operating the radio. Officer E had a gold licence and was driving a category A marked patrol car.
76. Upon hearing the order to abandon the pursuit, Officer E slowed down and turned off the patrol car’s warning lights and siren. The unit went into search mode.
77. Officers E and F were travelling north on Domain Road when they spotted the Toyota 4x4, which was driving past them at around the speed limit and heading south towards State Highway 2. Officer E carried out a three-point turn in order to follow the Toyota. The Toyota’s driver, Mr Wilson, began to accelerate away and overtook the vehicle in front of him.
78. At 5.29:04am, as required by Police policy, Officer F radioed NorthComms to advise that they had seen the Toyota and to request permission to recommence the pursuit. At this point the Toyota 4x4 was about 400 metres ahead of the officers and pulling away from them.
79. After a delay of about ten seconds, the dispatcher gave permission for the officers to recommence the pursuit. When interviewed, the pursuit controller said that he allowed the officers to pursue the vehicle again because:
  - i) the request came from a senior officer;

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<sup>4</sup> Urgent duty driving involves driving at speed with the patrol car’s warning lights and siren activated (see paragraphs 157-159).

- ii) the Toyota was heading away from the residential area and towards open roads;
  - iii) he had been advised that a dog unit was on its way to attend the incident;
  - iv) it had been reported to him that there was very light traffic, the road was dry, and there were no pedestrians in sight; and
  - v) the Toyota was stolen, which meant there was a *“significant element of public interest”* in apprehending the offenders.
80. Upon receiving permission to recommence the pursuit, Officer E activated his patrol car’s warning lights, but not the siren. Both Officers E and F have explained to the Authority that this was an oversight and not a deliberate act. This is accepted by the Authority.
81. At 5.29:22am, Officer F acknowledged that permission had been given to re-engage, and said *“... we’re not in pursuit yet, we’re just trying to catch up to it. It’s about two vehicles ahead of us heading towards the State Highway on Domain.”*
82. When interviewed by the Authority, Officer E explained that he and Officer F did not consider that they were in pursuit of the Toyota at this time because they were still some distance behind it and he could not be certain that its driver had seen their signal to stop. The Authority’s view, however, is that this was a pursuit situation, and that Officers E and F were in pursuit from the moment (i) they signalled the Toyota to stop by activating their patrol car’s warning lights; (ii) the Toyota failed to stop and accelerated away; and (iii) the officers took action to apprehend the driver by following the Toyota at speed (see paragraph 142 for the definition of a pursuit).
83. It was relevant that the officers had already asked for, and received, permission to recommence the pursuit. The reported distance between the patrol car and the Toyota (around 400-500 metres) was not itself enough to negate the fact that Officers E and F were conducting a pursuit, and it would have been valuable for the dispatcher to issue a pursuit warning at this time and for the officers to begin reporting risk factors to the pursuit controller, such as the traffic conditions and the speed and driving manner of the fleeing driver. For the Authority’s findings on this issue, see paragraphs 236-243.
84. At this point the Police dog unit (Officers G and H) contacted the dispatcher and advised that they were heading north towards the pursuit from Te Puke. The dispatcher asked whether they were carrying road spikes and Officer G replied that they were not.
85. Officer F then reported that the Toyota had turned left at the State Highway 2/Domain Road roundabout, heading south towards Te Puke. The officer said: *“... we are still not in pursuit, just trying to catch up.”*

86. Past the roundabout, the speed limit on State Highway 2 increases from 80 to 100 kph. This stretch of State Highway 2 has several bends, and Officers E and F occasionally lost sight of the Toyota 4x4 for a short time as it went around corners ahead of them.
87. At 5.30:15am, Officer F advised that they were now in pursuit of the Toyota, travelling at 141 kph. Officer F described the Toyota as being "... a wee way ahead" and "driving in its lane", and reported that it had "safely" overtaken another vehicle. The patrol car was about 300 - 400 metres behind the Toyota during this stage of the pursuit.
88. Officer F provided the dispatcher with his driver and vehicle classifications (gold and A), and at 5.30:41am the dispatcher gave the pursuit warning required by policy (see paragraph 33). Officer F acknowledged the warning and advised that they were now travelling at 145 kph. He also reported that the Toyota was "... still driving in its lane, traffic is medium, road is very dry."
89. The dispatcher then asked Officer F whether his patrol car's warning lights and siren were activated. In response, Officer E activated the siren and Officer F replied: "Yeah, affirmative, lights and siren are on."
90. At around this time, a car travelling south on State Highway 2 was overtaken by the Toyota 4x4. Its driver saw the Toyota cross double yellow no passing lines and travel into the northbound passing lane as it overtook his vehicle on a right hand bend near Bell Road. A northbound car moved towards the side of the road as the Toyota passed it.
91. Officer F reported to NorthComms that:
- "Vehicle is about 300 metres away now, it's two in front of us, it's overtaking vehicles, appears to be safe. We're now, we're now behind their vehicle, we're doing 150, no other vehicles, Te Puke, passing South Road. Our speed now is 150, still behind it. Speed's now 145 and we're just passing Poplar Lane. One or two vehicles on the road, very light traffic, nothing in front of it. Now doing Long Swamp, we're doing 160, we're catching it. His driving is um, very good, within his lane. And three metres, hundred metres ahead."*
92. At 5.32:10am, the NorthComms dispatcher asked Officer F to confirm that his patrol car was a "gold class" (category A) vehicle and he replied: "Yeah, Roger, Delta [the Police dog unit] is now in front of us."
93. At this point the Police dog unit (Officers G and H) took over as the lead vehicle in the pursuit. Officers E and F dropped back and were about 400 metres behind the dog unit for the rest of the pursuit.
94. In a statement made on the same day of the pursuit, Officer E said:

*"... [Mr Wilson's] driving was not dangerous. His speed was up but I would not describe his driving as either reckless or dangerous, although it was in a 4 x 4 type vehicle which obviously does not handle like some cars at that speed.*

*The passing manoeuvres that I witnessed were neither dangerous nor reckless, and there was no oncoming traffic that I noticed. In saying that, I only really noticed the finish of these passing manoeuvres and didn't see the whole movement."*

95. Officer F said in his statement: *"I consider that at no time did I think the incident was dangerous or did I observe at any moment during the incident anything that would have made me pull out of the fleeing driver incident."*
96. Stage 2 of the pursuit (including search mode) lasted for about four and a half minutes and covered a distance of about nine kilometres. During this stage the lead patrol car did not get closer than approximately 300 metres behind the Toyota 4x4.

### Stage 3

97. Officers G and H had driven north from Te Puke towards the pursuit. Officer G, a Police dog handler, was the driver and Officer H was responsible for operating the radio. Officer G had a gold licence and was driving a category A marked Police dog wagon.
98. About 4.5 kilometres north of Te Puke, Officer G completed a u-turn and backed his patrol car into a driveway off State Highway 2. He turned off his patrol car's headlights and waited with Officer H for the Toyota 4x4 and the pursuing Police vehicles to arrive.
99. Just before the Toyota passed them, Officer G activated his patrol car's warning lights and siren so that the other Police units would see them, and in the hope that the occupants of the Toyota would believe they had set up road spikes and stop.
100. The Toyota drove past Officers G and H. Officer G then moved out between the Toyota and the pursuing patrol car (Officers E and F) to take the lead position in the pursuit directly behind the Toyota. He took the lead because he wanted to be in *"prime position"* to deploy his dog if the Toyota stopped and the occupants tried to escape.
101. By the time Officer G had reached the same speed as the Toyota, his patrol car was about 300 metres behind. On occasion, Officers G and H temporarily lost sight of the Toyota when it went around the bends in the road approaching Te Puke.
102. Officer F did not realise that the driver of the dog unit had a passenger with him. He thought it would be difficult for Officer G to provide a radio commentary of the pursuit by himself, so at 5.32:20am he said:

*“So we’ll continue doing the commentary, our speed now is 120. Vehicle is a wee way ahead of us now, we’re doing 135. We’re in sight of Delta, doing probably the same speed as us. Traffic still very light. We can’t see it at the moment, it’s a wee way ahead.”*

103. At around this time, a woman driving north on State Highway 2 saw the Toyota 4x4 overtake another southbound vehicle by crossing double yellow no passing lines on a bend in the road near the Manoeka Road turnoff. She had to slow down and move over to the left side of her lane to avoid the Toyota, which came within about a metre of her car. It appears that neither Officers E and F nor Officers G and H witnessed this dangerous overtaking manoeuvre by the Toyota and it was not reported to NorthComms.
104. At 5.32:57am Officer F reported: *“Just passing Collins Lane, we can’t see the vehicle, Delta’s ahead of us. We can’t see Delta at the moment just gone round a corner.”*
105. Approaching Te Puke, the speed limit drops down from 100 kph to 70 kph. The 70 kph speed zone begins at the intersection with Collins Place, which is about 550 metres south of Collins Lane. None of the pursuing officers reported to NorthComms that the posted speed limit had decreased to 70 kph.
106. State Highway 2 becomes known as Jellicoe Street about 400 metres south of Collins Place. As the pursuit entered the commercial/industrial area on the outskirts of Te Puke, the Toyota 4x4 and the pursuing patrol cars were all using the painted median strip on Jellicoe Street to pass several other southbound vehicles.
107. At 5.33:07am, the NorthComms dispatcher asked Officer G whether he could see the Toyota. Officer G replied that he could, and that he had a passenger with him who would be able to provide the commentary of the pursuit.
108. The posted speed limit drops down to 50 kph near the intersection of Jellicoe Street and Atuaroa Avenue. This 50 kph zone begins about 1.2 kilometres after the 70 kph zone.
109. At 5.33:24am, Officer H began providing the commentary. He reported: *“Heading into Te Puke, travelling 135, 50 k zone.”* Officers G and H had just entered the 50 kph zone at the time of this message.
110. The dispatcher then gave Officers G and H the standard warning required by policy: *“Any unjustified risk to any person you’re to abandon pursuit immediately, acknowledge”* (see paragraph 33).
111. By this stage there were three patrol cars pursuing the Toyota 4x4: Officers G and H in the lead, then Officers E and F, and then Officers A and B who had caught up with the pursuit after it had been recommenced on Domain Road. The last two patrol cars were following Officers G and H at distances of 400 and 600 metres.

112. When interviewed, all of these officers said that they only heard the end of the dispatcher's warning: "...you're to abandon pursuit immediately, acknowledge". It appears that the dispatcher's message may have cut out, so that only the last part of the warning message was heard and the officers mistakenly believed they had been ordered to abandon the pursuit. The officers said that it had been difficult to hear the radio transmissions at times during this pursuit, particularly when approaching Te Puke.

113. The Police investigation for this pursuit found:

*"... there is a small radio black spot near [the] "black stump" area of Te Puke. This is the area immediately north of Te Puke and is described by Police I&T as small. This is a known issue for staff in the area, and in this instance had no direct impact on the final moments of the incident."*

114. Officer H acknowledged the message from the dispatcher at 5.33:38am and all three of the pursuing units abandoned the pursuit. Officers E and F and Officers A and B pulled over to the side of the road and deactivated their warning lights and sirens. Officer G began slowing down and looking for a safe place to pull over.

115. At around the same time as the officers were abandoning the pursuit, Mr Wilson lost control of the Toyota 4x4. According to witnesses, Mr Wilson was attempting to negotiate a left hand bend at high speed when he crossed the centre line and had to swerve to the left to avoid an oncoming vehicle. The Toyota then slid across a small bridge (the Ohineangaanga Bridge), mounted the kerb and crashed down a grass bank into a reserve on the left side of the road. The Toyota hit a lamp post and collided heavily with a tree.

116. CCTV footage obtained by Police from a camera attached to a business located just before the Ohineangaanga Bridge shows that Officers G and H were about 5.5 seconds and 200 metres behind the Toyota 4x4, with their patrol car's warning lights still activated. When interviewed, Officers G and H said that they were still slowing down and had to cross the Ohineangaanga Bridge before they could find a safe place to stop and deactivate the patrol car's warning devices (see paragraph 153 for the full abandonment procedure).

117. When Officers G and H reached the Ohineangaanga Bridge, they could no longer see the Toyota ahead of them. Officer G saw a large clump of dirt on the road and suspected that the Toyota must have crashed. He pulled over just after the bridge and Officer H saw the Toyota at the bottom of the grass bank. At 5.33:43am, Officer H radioed the dispatcher and said: "*He's crashed just before Cameron Road ... crashed off into a tree, left side of road ...*".

118. During its investigation, the Authority interviewed Officer G about his assessment of the risks when the pursuit was nearing Te Puke. He explained that he thought the risk was low because the road heading into Te Puke was wide, with a wide median, and the level traffic was light. Officer G also said:

*“In my role as a dog handler I am constantly making risk analysis on what I am doing, whether it’s deploying the dog, whether it’s driving to jobs, the urgency in which I drive to jobs, weighing the urgency of the job, and the need for the dog to be there, staff safety, public safety, so I am constantly making risk analysis and I consider myself very good at it. At that time, driving into Te Puke, if at any stage I wasn’t comfortable, I would have abandoned straight away. I am not too proud to pull out of a pursuit....”*

119. Officer G further stated that he had decided to abandon the pursuit himself if it reached the Ohineangaanga Bridge at such high speeds. He was aware that the road narrowed after that bridge, and that there were roundabouts to negotiate, as well as shops along Jellicoe Street where people heading to work would be stopping to buy their lunches early in the morning. Officer G felt that all these factors would have made the risk posed by continuing the pursuit unacceptable.
120. Officer H and the pursuit controller were also interviewed by the Authority. Officer H agreed with Officer G that the risks associated with continuing the pursuit were acceptable prior to reaching the bridge, because there were *“quite wide, open roads”* up until that point.
121. The pursuit controller said that when Officer H reported they were travelling at 135 kph in a 50 kph zone, *“it is highly likely that [he] would have considered abandonment again”*. However he was not sure whether that would have moderated the driving behaviour of Mr Wilson.
122. Stage 3 of the pursuit lasted approximately one and a half minutes and covered a distance of about four kilometres.
123. The entire pursuit lasted for about 17 and a half minutes, and covered a distance of about 38.5 kilometres.

#### **Police action following the crash**

124. Officers G and H found the two occupants of the Toyota 4x4 to be severely injured. The ambulance and fire service were immediately called to attend the crash.
125. Mr Wilson and his passenger, Mr Keepa, both died at the scene.

#### **Driver’s identity**

126. Police did not know the identities of Mr Wilson and Mr Keepa during the pursuit.

## POLICE INVESTIGATION

127. Police conducted an internal investigation into the pursuit. A review of the investigation concluded that:

- i) Officer A failed to correctly assess the risks involved in the pursuit along Papamoa Beach Road and should have abandoned the pursuit at that stage, considering the speeds involved (140 kph in 50 and 60 kph zones);
- ii) Officer E should have abandoned the second pursuit *“when it became obvious that the offender was going to engage in a similar driving manner to that displayed in Papamoa Beach Road”*; and
- iii) none of the officers involved in the incident were criminally liable.

128. A supplementary report on the use of road spikes during this incident concluded that the pursuit controller and Officers C and D had breached the Tyre Deflation Devices policy by deploying spikes when it was apparent that the pursued vehicle was travelling in excess of 100 kph (see paragraphs 161-166).

129. NorthComms also conducted a review of the handling of this incident, which was completed the day after the pursuit and concluded that:

- there were problems relating to the officers’ failure to state the posted speed limits and NorthComms’ failure to prompt the officers to provide them;
- units needed to be reminded of the importance of carrying out pre-deployment equipment checks;
- if the pursuit had been abandoned when the Toyota entered the no-exit section of Papamoa Beach, Police could have cordoned off the area and conducted a search, possibly giving the offending driver a *“cooling period”* to reduce his speeds;
- the lead pursuit car changing shortly before the vehicle crashed may have *“prevented an instruction to abandon being considered or issued although it is debatable whether this would have moderated the driving behaviour or avoided the crash.”*

## POLICE CRASH ANALYSIS

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### Environment

130. The crash occurred just after a moderate left hand bend on Jellicoe Street (State Highway 2) in Te Puke, 200 metres west of the intersection with Cameron Road. The bend is marked with signs stating the 50 kph speed limit.
131. Approaching Te Puke from the north, Jellicoe Street has one southbound lane and one northbound lane, with a flush median strip painted down the middle. The median strip ends just prior to the Ohineangaanga Bridge, which has double yellow no passing lines. The road surface is hot mix tarseal.
132. It was dark at the time of the crash, but the weather was fine and the road was dry. Jellicoe Street was well illuminated by street lights.

### Crash analysis

133. Mr Wilson was driving a stolen Toyota Hilux Surf 4x4 vehicle. A vehicle inspector found no mechanical defects that in his opinion would have contributed to the cause of the crash.
134. The crash investigator calculated that the Toyota 4x4 was travelling at a minimum speed of 110 kph as it negotiated the left hand bend prior to the Ohineangaanga Bridge. In his report he stated that:

*“The tyre marks left on the road by the Toyota are indicative of a yaw. This is caused by a vehicle attempting to steer around a bend at a speed too great for the drag factor of the road surface. As a result of the excessive speed the vehicle will side slip and will begin to rotate around its own centre of mass.”*

135. The crash investigator noted that the Toyota was travelling at more than twice the posted speed limit and concluded that: *“At 110 kilometres an hour [Mr] Wilson could not take the corner prior to the Ohineangaanga Bridge staying in his lane, without the vehicle going into a yaw.”*

### Harley Wilson

136. Mr Wilson had a history of driving offences. He was an unlicensed driver.
137. Trace amounts of alcohol were detected in a sample of Mr Wilson’s blood taken after the crash – 7 milligrams of alcohol per 100 millilitres of blood. The legal blood alcohol limit for a driver in New Zealand aged 20 years and over is 80 milligrams per 100 millilitres.

### **Officers involved**

138. The Police drivers who were involved in this pursuit were breath tested shortly after the crash and no alcohol was detected.

### **Cause of death**

139. Post mortem examinations concluded that Mr Wilson and Mr Keepa died from multiple high impact injuries.





# Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

## LEGISLATIVE AUTHORITY FOR PURSUITS

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140. 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

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### Background

141. On 18 October 2010, ten days after this pursuit took place, Police introduced the *Fleeing Driver* policy which replaced the pursuit policy that was in force during this incident. The Authority has undertaken its investigation and makes its findings and recommendations based on the policies and practices in place at the time of the pursuit.

### Definition

142. 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.

### Overriding principle

143. 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

144. The pursuit policy states that an officer is required undertake a risk assessment before commencing a pursuit. This involves consideration of the speed limit and manner of driving by the offending vehicle, the identity and other characteristics of the occupants of the offending vehicle, the weather conditions, the environment, the traffic conditions, and the 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.”*

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

146. 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

147. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 33, which the pursuing officer[s] must acknowledge. The pursuing officer[s] 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

148. 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.

149. The passenger in a pursuing vehicle must assist the driver by operating the radio and advising of possible hazards. If senior in rank or service, the passenger may also direct the driver to abandon the pursuit.

150. 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 33, and communicate instructions from the pursuit controller.
151. The pursuit controller 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.

### Pursuit abandonment

152. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The pursuit controller must then give the direct order *“All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now.”* Where aerial surveillance is involved, this order must specify whether the aerial unit is to abandon the pursuit also.
153. The pursuit policy sets out the steps that must be carried out by a pursuing officer following a decision to abandon a pursuit:

<b>Step</b>	<b>Action</b>
1	<i>Acknowledge the direction to abandon pursuit.</i>
2	<i>Immediately reduce speed to increase the distance between the offender’s vehicle and their own.</i>
3	<i>Deactivate warning devices once below the posted speed limit.</i>
4	<i>Stop as soon as it is safe to do so.</i>
5	<i>Report the abandonment to the pursuit controller, confirming they are stationary and stating their location.</i>

### Search phase/recommencement of pursuit

154. On 24 September 2009, the Manager of NorthComms issued a memorandum titled *Pursuit Abandonment and Implementation of Search Phase* to District Commanders, and asked that it be brought to the attention of staff. The Communications National Management Group agreed that the policy would apply across all three communications centres.
155. The document states:

*“Search Phase: Once police units have complied with abandonment procedure, the Pursuit Controller will direct them to move into a search phase within a defined area for a brief period of time. The purpose of this is to attempt to locate the vehicle that has evaded police. However, units will not be justified in engaging in Urgent Duty Driving for this purpose.*

**Recommencing Pursuit:** *If the vehicle is located, the unit is able to signal the vehicle to stop but if it again fails to stop and attempts to evade police, a pursuit is not to be recommenced without the approval of the Pursuit Controller. Such approval is then only to be considered if:*

- *The situation has changed following the abandonment; and*
- *The risk assessment criteria indicate that the risks involved in the pursuit have reduced so that the need to affect immediate apprehension is no longer outweighed by the risks posed by recommencing the pursuit.”*

156. This document has now been incorporated into the *Fleeing Driver* Policy published on 18 October 2010. This policy reiterates that there is no longer a justification for units to engage in urgent duty driving and that the search phase units must not exceed the posted speed limit. The pursuit is not to be recommenced without the approval of the pursuit controller.

#### **Urgent duty driving policy**

157. 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].”*

158. Critical incidents include situations involving (i) force or the threat of force, (ii) any person facing the risk of serious harm, or (iii) officers responding to people in the act of committing a crime.

159. When engaged in urgent duty driving, Police must use their warning lights and sirens *“at all times (continuously) unless a “silent approach” is tactically appropriate....”*

#### **Pre-deployment vehicle check**

160. The *Police Driver Training Manual* states that before using a Police vehicle it is important that a through pre-start check is carried out. As well as some specific vehicle and equipment checks; officers are required to: *“Check all equipment and ensure it is in a safe operating condition.”*

## Road spikes

161. The pursuit policy permits the use of road spikes during a pursuit. They must be deployed by a trained operator and can only be used to stop a fleeing vehicle where no other, less dangerous, means of stopping the vehicle are readily available.
162. On 8 October 2010, both the pursuit policy and the *Tyre Deflation Devices* policy stated that tyre deflation devices must not be deployed on vehicles travelling at more than 100kph, motorcycles and heavy vehicles. Both policies were amended in August 2011 to remove the restriction on the use of tyre deflation devices on vehicles travelling at more than 100kph.<sup>5</sup>
163. The tyre deflation devices policy regulates the use of road spikes. Under the policy the pursuit controller must (amongst other things):
- consider whether to deploy road spikes;
  - supervise and monitor the officers involved in deploying the road spikes;
  - maintain communication with the deploying officer; and
  - regularly question the deploying officer about the road and traffic conditions.
164. The deploying officer must (amongst other things):
- be trained in deploying the road spikes;
  - deploy them only on the authority of the pursuit controller;
  - identify and establish communication with the lead pursuit vehicle and find out:
    - the number of vehicles involved, and the location, direction and speed of the pursuit;
    - the target vehicle's description, whether weapons are involved, and other risk factors;
    - the target vehicle's lane.

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<sup>5</sup> Previously the Police had two authorised tyre deflation devices – 'Stingers' and 'Road spikes'. The restriction on the use of tyre deflation devices on vehicles travelling at more than 100 kph has been removed because Police now only use 'Stingers', which cause a more controlled deflation of the vehicle's tyres and are safer to use at higher speeds.

165. The lead pursuit driver must identify and establish communication with the deploying officer and inform him or her of the matters contained in paragraph 164 above.
166. The site chosen to deploy the road spikes must (amongst other things):
- provide a clear view of the road in each direction;
  - offer enough visibility in all directions to allow the deploying officer to observe the suspect vehicle and other traffic as they approach; and
  - provide cover for the deploying officer, rather than simple concealment.



# The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

## THE AUTHORITY'S ROLE

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167. Under the Independent Police Conduct Authority Act 1988 (the Act), the Authority's functions are to:

- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
- investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.

168. Section 27(1) of the Act requires the Authority, on completion of its investigation, to form an opinion on whether any Police decision, act, omission, conduct, policy, practice or procedure was contrary to law, unreasonable, unjustified, unfair, or undesirable.

## THE AUTHORITY'S INVESTIGATION

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169. As required under section 13 of the Act, on 8 October 2010 Police notified the Authority of the deaths of Mr Wilson and Mr Keepa.

170. The Authority assigned an investigator, who travelled to the scene and viewed the environment where the pursuit took place. The Toyota Hilux Surf 4x4 was also examined.

171. The Authority's investigator reviewed material provided by Police, including statements from the officers involved in the pursuit, statements from independent witnesses, copies of the NorthComms transmissions, reviews of the incident, and the crash investigation report. The Authority's investigator also independently interviewed the Police staff directly involved in the pursuit.

ISSUES CONSIDERED

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172. The Authority's investigation considered the following issues:

- Did Police comply with the law and pursuit policy at each stage of the pursuit, specifically in relation to the:
  - commencement and recommencement of the pursuit;
  - communication;
  - speed and manner of driving; and
  - ongoing risk assessment/abandonment.
  
- Did Police comply with policy in relation to the use of road spikes, specifically in relation to:
  - the pre-deployment vehicle check
  - the decision to use road spikes;
  - selection of the deployment site; and
  - the actual deployment.



# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

## STAGE 1 OF THE PURSUIT

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### Commencement of pursuit

173. Officers A and B were authorised under the Land Transport Act 1998 to stop Mr Wilson for traffic enforcement purposes.
174. Mr Wilson first came to Officer A's attention when he appeared to be trying to avoid a Police alcohol checkpoint at 5.15am on Maunganui Road. Officers A and B then saw Mr Wilson exceeding the speed limit of 50 kph. They signalled Mr Wilson to pull over so that they could conduct a routine breath alcohol test.
175. Mr Wilson failed to stop and accelerated away. Officers A and B considered the risks involved and decided that it was safe to commence a pursuit because (i) the road was dry and in good condition, and (ii) there would be little traffic and few pedestrians due to the time of morning (see paragraph 29).
176. Officer A and the patrol vehicle were certified to conduct pursuits under the Professional Police Driver Programme. Officer A was a 'gold' rated driver.

#### FINDING

Officers A and B complied with the law and Police pursuit policy in commencing this pursuit.

### Communication

177. At around 5.16:20am Officer B advised NorthComms that a vehicle had failed to stop on Maunganui Road. She reported the location and direction of the pursuit, and stated the Toyota 4x4's registration number when asked to do so by the NorthComms dispatcher.
178. After confirming the location of the pursuit, the dispatcher provided the safety warning required under the pursuit policy (see paragraph 33). Officer B acknowledged the

warning. After prompting from the dispatcher, Officer B stated that the reason for the pursuit was *"Speed on Maunganui Road."*

179. Throughout stage 1 of the pursuit Officer B regularly provided updates to NorthComms describing the location and direction of the pursuit, the speeds reached, and the manner of driving of the Toyota 4x4. She also reported that the Toyota had two people in it.
180. The dispatcher confirmed with Officer B that the pursued vehicle was a Toyota Hilux Surf, and, about four and a half minutes into the pursuit, advised that it had recently been reported as stolen from Levin. The dispatcher and the pursuit controller organised another unit (Officer C and D) to attend the pursuit and set up road spikes on Papamoa Beach Road.
181. At around 5.25:21am, the dispatcher asked Officer B to confirm the dispatcher's belief that the speed limit on Papamoa Beach Road was 80 kph. The applicable speed limits were actually 60 and 50 kph. Officer B did not respond because she was busy relaying to NorthComms that the Toyota had reached the end of Papamoa Beach Road and was turning around. The dispatcher did not prompt Officer B to reply to her request for confirmation of the speed limit (see paragraphs 56-58).
182. The failure to determine the correct speed limit on Papamoa Beach Road could have adversely affected the pursuit controller's ability to carry out a thorough risk assessment. However, when interviewed by the Authority, the pursuit controller said that his assessment would not have changed in the circumstances of this particular pursuit had he known that the applicable speed limits were 50 and 60 kph rather than 80 kph.
183. Officer B did not advise NorthComms of the multiple changes in the posted speed limit during stage 1 of the pursuit. She only reported the applicable speed limit twice – at 5.22:08am she advised that they were travelling at 144 kph in a 50 kph zone (see paragraph 45), and after the Toyota had avoided the road spikes she reported that they were travelling at 153 kph in a 60 kph area (see paragraph 66).
184. Whilst the pursuit policy required the pursuing officers to consider the speed limit as part of their risk assessment, it did not require the officers to report this information to NorthComms. This has changed with the introduction of the fleeing driver policy which now requires the officers to report the actual speed and the posted speed limit at the same time (see paragraph 141).
185. The posted speed limit changed many times during this stage of the pursuit. The Authority is of the view that it would have been necessary for a meaningful risk assessment, although not strictly required by policy, for Officer B to have given more regular reports on the posted speed limit. For example, the risk associated with a

reported speed of 120 kph in a 100 kph area is very different to that of a reported speed of 120 kph in a 50 kph area.

#### FINDING

Police complied with the pursuit policy in respect of communication, however in the circumstances it would have been desirable for more regular updates on the posted speed limit to have been given alongside the speed reports.

### Police speed and manner of driving

186. Pursuit policy requires officers to drive in a manner that prioritises the safety of the public and staff. In accordance with this policy, Officer A kept his patrol car's warning lights and siren activated at all times during stage 1 of the pursuit.
187. Throughout stage 1 of the pursuit, Officer B reported the following speeds:

Reported speeds (kph)	Speed limit (kph)
115, 121	50
96, 136, 96, 134	70
147, 151, 151	100
118, 110	80
144	50
109, 140, 136, 138	60
116, 107, 128	50
135, 153	60

188. The Authority is of the view that some of the speeds reached by Officers A and B during stage 1 of the pursuit were dangerous and were not justified in the circumstances. Many of the reported speeds were more than twice the posted speed limit, and in one case the reported speed was almost three times the speed limit, in a residential area (144 kph in a 50 kph zone on Domain Road).
189. The relevance of these sustained high speeds to the Police's risk assessment and the decision whether or not to abandon the pursuit is discussed in the next section of this report.

#### FINDING

The dangerously high speeds reached by Officers A and B during stage 1 of the pursuit were unjustified.

### Ongoing risk assessment/abandonment

190. During the course of a pursuit, Police officers must continue to assess the risks involved and must abandon the pursuit if the potential risks outweigh the immediate need to apprehend the offender.
191. Officers A and B and the pursuit controller were interviewed by Police and by the Authority regarding their risk assessments during stage 1 of this pursuit (see paragraphs 70-72). They identified the following factors which led them to continue the pursuit of the Toyota 4x4 up until the failed attempt to stop it using road spikes:
- i) there was a low level of traffic and few pedestrians due to the time of morning;
  - ii) the road and weather conditions were good; and
  - iii) the Toyota's driver (Mr Wilson) was driving in a controlled manner, and was staying in his lane apart from when he was overtaking vehicles.
192. Additional relevant risk factors were that: (i) the identities of the driver and his passenger were not known; and (ii) the Toyota was a stolen vehicle.
193. However the Authority's view is that Mr Wilson quickly reached speeds that were high enough to outweigh the factors in favour of continuing the pursuit. The pursuit should have been abandoned in the early stages when it reached speeds of 115 and 120 kph in a 50 kph area. Other instances where the pursuit should have been abandoned due to dangerously high speed include:
- Maunganui Road/State Highway 2 – 136 and 134 kph in a 70 kph zone;
  - Domain Road – 144 kph in a 50 kph zone;
  - Papamoa Beach Road – 140, 136 and 138 kph in a 60 kph zone; 116, 107, and 128 kph in a 50 kph zone.
194. The officers and the pursuit controller appear to have overlooked the fact that the sustained high speed of the pursuit was a significant risk factor in itself, particularly in areas such as Maunganui Road, Domain Road and Papamoa Beach Road. In those streets there are sections of road which are not suitable to be driven on at such high speeds, as well as multiple side streets where other cars may suddenly pull out into the road – even at 5.20am when there are usually lower levels of traffic. The speed of the Toyota 4x4 posed a considerable risk to other road users.
195. Furthermore, although Officers A and B considered that Mr Wilson “drove well” and in a “controlled” manner, there were instances on State Highway 2 where he crossed the centre line and overtook vehicles at high speed (134 and 147 kph). There was also a point

on Papamoa Beach Road where the Toyota drove through a roundabout on the wrong side of the road.

196. Mr Wilson had demonstrated by his actions that he had no intention of stopping for Police, and that he was willing to take risks in order evade apprehension. Officer A (as the driver of the lead pursuit vehicle), Officer B (as the senior officer in the lead pursuit car), or the pursuit controller could have, for good reason, made the decision to abandon at several points during this stage of the pursuit. But at the time the pursuing officers and the pursuit controller thought that there was little danger.
197. The Authority does not agree with their risk assessment. The Authority finds that the high speeds reached during this stage of the pursuit were not only dangerous, but they put other road users, the officers, and the occupants of the Toyota 4x4 at unjustified risk.
198. The initial reason for the pursuit was that the Toyota had appeared to be avoiding an alcohol checkpoint, and had then travelled at about 80 kph in a 50 kph zone. By the time Officers A and B learned that the vehicle had been reported stolen (about four and a half minutes into the pursuit), they had already reached speeds of 121 kph in a 50 kph zone, 136 kph in a 70 kph zone, and 151 kph in a 100 kph zone. The initial reason for the pursuit did not justify the sustained high speeds that were reached, and the pursuit should have been abandoned by that point because the risks to safety outweighed the immediate need to apprehend the offender.
199. The fact that the pursued vehicle had been reported stolen did increase the need for Police to apprehend Mr Wilson, but in the absence of other known risk factors, this did not justify the reported speed of 144 kph in a 50 kph zone on Domain Road (about six minutes into the pursuit), or the ongoing high speeds on Papamoa Beach Road.
200. It was not until 11 minutes and 20 seconds into the pursuit, after the attempt to stop the Toyota 4x4 by deploying road spikes had failed, that the pursuit controller ordered the pursuit to be abandoned.
201. Officer B acknowledged the order and Officer A immediately decreased his speed, deactivated his patrol car's warning devices and pulled over to the side of the road. Officer B reported the abandonment to NorthComms and stated the officers' location.

#### FINDINGS

Officers A and B and the pursuit controller did carry out risk assessments as required under the Police pursuit policy – however these assessments were inadequate in respect of their consideration of the risk posed by driving at sustained dangerous speeds, far in excess of the posted speed limits.

Given the risk, Officers A and B and the pursuit controller should have abandoned the pursuit in the early stages.

Once the abandonment was ordered by the pursuit controller, Officers A and B fully complied with the requirements of the pursuit policy in respect of abandonment.

#### USE OF ROAD SPIKES

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202. As discussed above, the Authority has concluded that this pursuit should have been abandoned in its early stages, well before it reached Papamoa Beach Road where road spikes were deployed in an attempt to stop the Toyota 4x4.
203. Nonetheless, the Authority will consider whether Police complied with policy in respect of their use of the road spikes.

#### Pre-deployment vehicle check

204. The Police *Driver Training Manual* instructs officers to: “Check all equipment and ensure it is in safe operating condition”.
205. Officers C and D had not carried out a pre-deployment check of their patrol car or of the equipment contained within it before they left the Police station (see paragraph 37). They did not know whether or not they had spikes on board, nor did they know that the spikes they were in fact carrying were not in a workable condition.
206. The failure of Officers C and D to carry out a pre-deployment check meant that once they got to the deployment site, and located the spikes, the officers spent valuable time getting the spikes into an operational condition before they could be deployed (paragraph 62).

#### FINDING

Officers C and D did not carry out a pre-deployment vehicle and equipment check as required by Police policy.

#### Decision to use road spikes

207. Due to the manner of Mr Wilson’s driving and the fact that the Toyota 4x4 was stolen (see paragraph 43), Police had a duty to try and stop the Toyota at the earliest opportunity.
208. The NorthComms pursuit controller knew that Papamoa Beach Road was a dead end, and realised that the driver of the Toyota may turn around and return in the direction it had come from. With that possibility in mind, he told the dispatcher to direct Officers C and D to be ready to deploy road spikes (if they had them) at the intersection of Parton Road and Papamoa Beach Road.

209. Since Mr Wilson had failed to stop for over ten minutes, the decision to use road spikes to try to stop him was reasonable – provided that the Toyota would be travelling at below 100 kph when the spikes were deployed (see paragraphs 214-224 below).
210. Officers C and D were trained in the use of road spikes.

#### FINDING

The pursuit controller's decision to attempt to stop the Toyota using road spikes was a sound tactic – provided they could be deployed in compliance with policy.

### Deployment site

211. Although the dispatcher had directed Officers C and D to set up the road spikes at the intersection of Papamoa Beach Road and Parton Road, the officers instead decided to set them up at the intersection of Papamoa Beach Road and Kirkpatrick Place because they had already driven past the intersection with Parton Road, and Officer C considered that Kirkpatrick Road would be less likely to have any traffic (see paragraph 60).
212. As explained in paragraph 166, Police policy states that an officer may only use road spikes at sites where there is clear view of the road in each direction, enough visibility for the officer to see the suspect vehicle and other traffic as they approach, and cover (not just concealment) for the officer.
213. Papamoa Beach Road is a straight road. The deployment site offered a clear view in both directions and allowed the officers to see both the Toyota and other traffic.

#### FINDING

The location chosen by Officers C and D to deploy the spikes was suitable in the circumstances.

### Compliance with policy

214. At the time of this pursuit the *Tyre Deflation Devices* policy stated that road spikes must not be deployed on vehicles travelling at more than 100 kph (see paragraph 162). Under the policy, responsibility for establishing the speed of the fleeing vehicle rests with both the pursuit controller and the officer deploying the spikes. The lead pursuit vehicle (Officers A and B) is also responsible for reporting the speed of the pursuit to the pursuit controller and the deployment staff (Officers C and D).
215. During its investigation the Authority asked Officers C and D, and the pursuit controller, what speed they believed the Toyota 4x4 was travelling at when the spikes were

deployed. Officer C said: *“At the time of deployment I was unsure as to the exact speed the vehicle was travelling, however I assessed this to be about 100 km/hr.”* Officer D said: *“The last 3 speeds that I heard was 116km, 116km & 107km and slowing and from our visual sighting of the fleeing vehicle, I estimated the speed to be about 100km/hr, so deemed the deployment appropriate”.*

216. The pursuit controller said: *“[The speed was] well under a 100km/hr leading up to the TDD [Tyre Deflation Device]. Under 50 km/hr by the time they reached the TDD.”* When the Authority asked why he believed the speed was less than 50 kph by the time the Toyota reached the spikes he said:

*“It was always my plan that the area where it was deployed is an intersection where any motorist will have to slow right down in order to negotiate it. I understand that the fleeing driver slowed right down at this intersection when they drove through it the first time before heading down the no exit peninsula. The spikes were not deployed then but it was on their way back. The fleeing driver slowed right down and onto the grass area of the intersection to elude the spikes before driving back onto the road.*

*I made that judgment call from listening to the commentary and referring to the maps.”*

217. Having examined the NorthComms transmissions and maps of the area, the Authority can see no reason why the pursuit controller believed that the vehicle would have to slow down for that section of road. There is no evidence that the Toyota *“slowed right down”* the first time it travelled through that area. There are many intersections along Papamoa Beach Road, and there does not seem to be any reason why the pursued vehicle would have slowed down for the intersection with Kirkpatrick Place, where the spikes were laid, or for the intersection with Parton Road, where the pursuit controller originally intended the spikes to be deployed. The road is straight and there are no roundabouts at those locations.
218. The speeds that were reported by Officer B as the pursuit progressed along Papamoa Beach Road were: 109, 140, 136, 138, 116, 107 and finally 128 kph. Officers C and D were on the same radio channel as Officer B and could hear the reported speeds, as could the dispatcher and pursuit controller.

219. When the dispatcher was interviewed by Police, she said:

*“I did say to the [pursuit controller], did he want to advise staff not to deploy spikes as I was aware that the vehicle was travelling just over the 100 kph, around 108 kph. I can’t remember the words he used but he didn’t say not to use spikes.”*

220. The pursuit controller later said that he did not recall hearing the dispatcher raise the speed issue with him, and that he had his headset on and was listening to the pursuit at the time. He said his decision to deploy the spikes was based on the facts, and pointed out that: *“These situations are dynamic and often extremely fluid and are often viewed thereafter with the benefit of time and hindsight.”*
221. The Authority finds that, given that the last reported speed was 128 kph (at a position about 800 metres from the deployment site), the pursuit controller and Officers C and D should have made the decision not to deploy the spikes.
222. It is possible that Officers C and D were distracted from hearing the latest reported speed because they had discovered that the deployment rope for their road spikes was not attached, and they had to quickly attach the rope before the Toyota arrived at their location.
223. However at no time on Papamoa Beach Road was the speed of the pursuit reported to be less than 107 kph. Officers C and D and the pursuit controller should have been alert to the high probability that the Toyota would be travelling at more than 100 kph when the time came to deploy the spikes.
224. In this case the Toyota 4x4 evaded the road spikes by swerving onto the opposite side of the road (see paragraph 64).

#### FINDINGS

The pursuit controller breached policy by ordering the deployment of road spikes on a vehicle travelling at more than 100kph.

Officers C and D breached policy by attempting to deploy road spikes on a vehicle travelling at more than 100kph<sup>6</sup>.

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<sup>6</sup> On 8 October 2010, both the pursuit policy and the tyre deflation devices policy stated that tyre deflation devices must not be deployed on vehicles travelling at more than 100kph, motorcycles and heavy vehicles. Both policies were amended in August 2011 to remove the restriction on the use of tyre deflation devices on vehicles travelling at more than 100kph. Police now only use the ‘Stinger’ tyre deflation device which causes a more controlled deflation of the vehicle’s tyres and are safer to use at higher speeds.

## STAGE 2 OF THE PURSUIT

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### Recommencement of pursuit

225. About one and a half minutes after the pursuit had been abandoned on Papamoa Beach Road, Officers E and F drove past the Toyota 4x4 which was being driven within the speed limit, heading south on Domain Road towards State Highway 2.
226. The Toyota, driven by Mr Wilson, began to accelerate away. Officer E completed a three-point turn to get behind it and Officer F sought permission from NorthComms to recommence the pursuit.
227. Officer E and his patrol vehicle were certified to conduct pursuits under the Professional Police Driver Programme. Officer E was a 'gold' rated driver.
228. The pursuit policy states that an abandoned pursuit is not to be recommenced without the approval of the pursuit controller. Recommencement is only to be considered if the situation has changed following abandonment, and the risks involved no longer outweigh the need to immediately apprehend the offender (see paragraph 155).
229. The pursuit controller considered the request for about ten seconds before giving his permission for Officers E and F to recommence the pursuit. He believed that the situation had changed from the time when the pursuit was abandoned for a number of reasons, including that the Toyota was now heading towards more open roads and a dog unit was on its way to assist with the pursuit (see paragraph 79). Additionally there continued to be favourable environmental conditions for a pursuit – no pedestrians, a low level of traffic and a dry road which was in good condition.
230. Officers E and F also considered that the situation had changed and that the risks had decreased, because when they first saw the Toyota 4x4 it was driving at "normal speed".
231. However soon after Mr Wilson had passed Officers E and F's patrol vehicle he increased his speed. He quickly reached speeds of 140-160 kph in a 100 kph zone. Officer F did not relate Mr Wilson's speed or change in driving behaviour to NorthComms, so the pursuit controller was not aware of this information when he gave permission to recommence the pursuit.
232. Speed is a very important factor to consider during any pursuit-related risk assessment, and especially in this case where sustained high speeds were a major issue in stage 1 of the pursuit. The pursuit controller should have sought information about the fleeing driver's speed and considered this before deciding to give Officers E and F permission to recommence the pursuit.

233. Although the road where the pursuit was heading was more suited to high speeds than it had been in the Papamoa Beach area, there continued to be no indication that Mr Wilson would comply with the Police request for him to stop. Furthermore, as time went on, the level of traffic was increasing as people began driving to work, increasing the risk posed to the public by the high-speed pursuit.
234. In the Authority's view, Officer E (as the driver and senior officer in the lead pursuit vehicle) should have abandoned the pursuit once it became apparent that Mr Wilson was not going to modify his driving behaviour and would continue driving at sustained dangerous speeds (see discussion at paragraphs 246-252).

#### FINDINGS

Officers E and F complied with the pursuit policy by seeking permission from the pursuit controller to recommence the pursuit. However, they did not provide the pursuit controller with all relevant risk factors.

While the pursuit controller did consider several important risk factors before giving permission to recommence the pursuit, he should also have sought information about and considered the fleeing driver's speed.

Following the recommencement, Officer E should have abandoned the pursuit once it became apparent that Mr Wilson was not going to modify his driving behaviour.

235. Although the Authority has found that Officer E should have abandoned the pursuit at the beginning of stage 2, the Authority will now consider whether Police complied with policy in respect of the conduct of the rest of the pursuit.

#### Communication

236. After receiving permission to recommence the pursuit, Officer F started giving updates about the Toyota 4x4's location and direction of travel but told the NorthComms dispatcher that they had not yet engaged in a pursuit because they were still trying to catch up with the vehicle.
237. As explained in paragraph 82, the Authority's view is that the officers were in pursuit from the moment they signalled Mr Wilson to stop, he failed to stop and attempted to evade Police, and the officers took action to apprehend him by following at speed. It is not known whether Mr Wilson had seen them signalling him to stop but he clearly changed his driving behaviour by accelerating away at high speed.
238. The dispatcher and the pursuit controller should have questioned the officers as to why they believed they were not yet in pursuit, and should have sought more information about the distance between the Toyota and the Police car.

239. Because Officers E and F advised that they were not yet in pursuit, there was a delay of about one minute and 20 seconds before the dispatcher issued the safety warning required under the pursuit policy (see paragraph 33). Officer F acknowledged the warning.
240. After this, Officer F continually updated NorthComms with details of the speeds, direction of travel, level of traffic, and the Mr Wilson's manner of driving.

**FINDING**

Apart from the communications failures regarding the high speed (detailed above) and Officer F's delay in notifying NorthComms that they were in pursuit, Police complied with the pursuit policy in respect of communication.

**Police speed and manner of driving**

241. Officers E and F were about 300-400 metres behind the Toyota 4x4 during stage 2 of the pursuit. The speeds reported by Officer F were 141, 145, 150, 145 and 160 kph, all in a 100 kph zone.
242. In the Authority's view the sustained high speeds reached by Officers E and F during stage 2 of the pursuit were not justified in the circumstances and, for that reason alone, the pursuit should have been abandoned.
243. The relevance of the sustained high speeds to the officers' ongoing risk assessment and other risk factors are discussed further in the next section of this report.
244. Police are required to use their warning lights and siren while engaged in a pursuit or in other urgent duty driving (see paragraphs 157-159). In this case Officer E activated his warning lights when he began to follow the Toyota, but not his siren. Both Officers E and F have explained to the Authority that the failure to activate the patrol car's siren was an oversight.
245. Shortly after issuing the safety warning, the dispatcher asked Officer F to confirm that his patrol car's lights and siren were on. Officer E then activated the siren and Officer F reported that both the lights and siren were activated.

**FINDINGS**

The sustained high speeds reached by Officers E and F during stage 2 of the pursuit were not justified in the circumstances and, for that reason alone, the pursuit should have been abandoned.

Officers E and F breached Police policy by initially pursuing the Toyota at speed without activating their patrol car's siren.

### Ongoing risk assessment/abandonment

246. When interviewed by the Authority, the pursuit controller said he found the commentary provided by Officer F during stage 2 of the pursuit to be measured and controlled, and he was reasonably comfortable for the pursuit to continue.
247. Officers E and F continually assessed the risks involved. They were not concerned by the speed or manner of driving of Mr Wilson, which they considered to be good and controlled. Officer F described the level of traffic to NorthComms as “*medium*” and then, about one minute later, “*very light*”. He reported that the Toyota 4x4 was staying in its lane apart from when it was “*safely*” overtaking vehicles.
248. The Authority has found that there was at least one occasion when Mr Wilson crossed double yellow lines while overtaking a vehicle on a bend in the road (see paragraph 90). In the Authority’s view, this was not a safe manoeuvre. However it is acknowledged that Officers E and F may not have had the Toyota in sight when this manoeuvre took place.
249. Overall, the Authority is of the view that the risk assessment of Officers E and F and the pursuit controller was flawed. Relevant risk factors that were not given enough emphasis by Officers E and F were:
- Mr Wilson had clearly demonstrated his intention to continue taking risks by travelling at sustained high speeds in order to evade apprehension;
  - there were bends in the road, affecting visibility when driving at such a high speed;
  - the levels of traffic would be increasing at that time of morning, with agricultural shift workers heading to work; and
  - the pursuit was approaching Te Puke, where the speed limit decreases to 70 and then 50 kph.
250. As stated above in paragraph 234, Officer E should have abandoned the pursuit when the officers realised that Mr Wilson was going to continue his earlier driving behaviour and had no intention of stopping for Police. Furthermore, once the pursuit controller heard the speeds reported by Officers F, he should have ordered the officers to abandon the pursuit (see paragraph 241).
251. There were no officers with road spikes positioned in front of the Toyota (see paragraph 84), and in any case Mr Wilson was travelling too fast for spikes to be deployed in compliance with the *Tyre Deflation Devices* policy. Unless Mr Wilson slowed down significantly (which was unlikely given his earlier driving behaviour), the pursuit would have to be abandoned once it reached Te Puke.

252. The risks posed to the public, the occupants of the fleeing vehicle, and the Police by continuing the pursuit as it neared Te Puke outweighed the need to immediately apprehend the fleeing driver.

#### FINDINGS

In the circumstances, the risk assessment carried out by Officers E and F and the pursuit controller was inadequate.

Officer E and the pursuit controller should have abandoned the pursuit when they became aware that Mr Wilson had recommenced driving far in excess of the posted speed limit in order to evade Police.

#### STAGE 3 OF THE PURSUIT

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##### Continuation of pursuit

253. About 4.5 kilometres north of Te Puke, Officers G and H (the Police dog unit) took over as lead vehicle in the pursuit. Officer F advised NorthComms of this at around 5.32:10am.
254. Officer G and his patrol vehicle were certified to conduct pursuits under the Professional Police Driver Programme. Officer G was a 'gold' rated driver.
255. When interviewed by Police the day after the pursuit, Officer G explained that he took the lead position in the pursuit because he needed to get into "*prime position*" to deploy his dog if the offenders stopped, exited the Toyota and tried to escape on foot.

#### FINDING

Officer G's decision to take the lead position in the pursuit was appropriate in the circumstances.

##### Communication

256. Officer F was unaware that Officer G had a passenger, so he continued to provide the commentary of the pursuit (see paragraph 102). He reported that he and Officer E were travelling at 120 kph, and then at 135 kph, and that the level of traffic was "*still very light*". He then explained that he could no longer see the Toyota because it was "*a wee way ahead*".
257. At the intersection of State Highway 2 and Collins Place, on the outskirts of Te Puke, the posted speed limit drops from 100 kph to 70 kph. This materially increased the risk

associated with the pursuit and was highly relevant to the pursuit controller's ongoing risk assessment, but was not conveyed to NorthComms by any of the pursuing officers.

258. After taking over the lead position in the pursuit, there was a delay of about one minute before Officer G informed NorthComms that he had a passenger (Officer H) who was able to provide the commentary. Officers G and H should have notified NorthComms immediately that they had become the lead vehicle and that Officer H would be able to give the commentary, because they were closer to the Toyota and in a much better position to describe what was happening than Officer F.
259. After the intersection with Te Puke Quarry Road, State Highway 2 becomes known as Jellicoe Street. Near the intersection of Jellicoe Street and Atuaroa Avenue (about 1.2 kilometres after the 70 kph zone begins), the speed limit decreases to 50 kph.
260. Officers G and H were just entering the 50 kph zone when, at 5.33:24am, Officer H reported: *"Heading into Te Puke, travelling 135, 50 k zone."* By now the pursuit was fast approaching the centre of Te Puke.
261. The dispatcher then gave Officers G and H the safety warning required under the pursuit policy: *"Any unjustified risk to any person you're to abandon pursuit immediately, acknowledge"*. Officers G and H and the two Police units behind them, Officers E and F and Officers A and B, misheard the warning and thought they were being ordered to abandon the pursuit (see paragraph 112).
262. When interviewed, all of these officers reported that they had experienced difficulty hearing their radios as they approached Te Puke from the north (see paragraph 112).
263. Since the officers all believed they had been ordered to abandon the pursuit, it is likely that the dispatcher's radio message was somehow impaired so that only the last part was heard.
264. Putting aside the possible radio impairment issue; the Authority believes that, on hearing the speed report of 135 kph in a 50kph speed zone, the pursuit controller should have immediately ordered the abandonment of the pursuit (see discussion at paragraphs 269-278).

#### FINDINGS

Officers E, F, G and H did not report a significant risk factor to NorthComms – that the pursuit had entered a 70 kph zone.

There was inadequate communication with NorthComms by Officers G and H. They did not fully comply with the requirements of the pursuit policy because despite being the lead pursuit vehicle containing two officers, they did not immediately assume the role of providing commentary to NorthComms.

Whilst the abandonment of the pursuit appears to have occurred due to radio impairment, it was, in fact, appropriate in the circumstances.

### Police speed and manner of driving

265. Officers G and H had their patrol car's warning lights and siren activated throughout stage 3 of the pursuit. Initially the officers were about 300 metres behind the Toyota 4x4, and by the time the Toyota crashed they were about 200 metres behind.
266. The officers were travelling at about 135 kph – in a 100 kph zone to begin with, then in a 70 kph zone, and finally in a 50 kph zone.
267. The 70 kph zone approaching Te Puke is about 1.2 kilometres long, which means there was time for Officer G to decrease his speed before he reached the 50 kph zone. However he continued driving at high speed in order to keep up with the Toyota.
268. As discussed below, the Authority is of the view that Officer G or the pursuit controller should have made the decision to abandon the pursuit due to the ongoing high speeds as it entered Te Puke's 70 kph and 50 kph areas.

### FINDING

The sustained high speed reached by Officers G and H (135 kph in a 70 and then 50 kph zone) was dangerous to other road users and themselves and was not justified in the circumstances.

### Ongoing risk assessment/abandonment

269. Stage 3 of the pursuit only lasted for about one and a half minutes before the Toyota 4x4 crashed.
270. Soon after Officers G and H had become the lead patrol car in the pursuit, a woman driving north on State Highway 2 had to take evasive action when she saw the Toyota cross double yellow no passing lines and enter her lane as the driver was overtaking another vehicle on a bend (see paragraph 103). This incident was not reported to NorthComms and subsequently was not considered as part of the pursuit controller's ongoing risk assessment. The Authority accepts that Mr Wilson's dangerous overtaking manoeuvre may not have been seen by Officers G and H or by Officers E and F, because they occasionally lost sight of the Toyota as it went around corners ahead of them.
271. Throughout stage 3 of the pursuit, Officers G and H and the pursuit controller all believed that the need to immediately apprehend the driver of the Toyota outweighed the risks

involved in the pursuit. They were happy for the pursuit to continue as it entered Te Puke, at least up until the Ohineangaanga Bridge (see paragraphs 118-120).

272. The Police officers believed there was significant public interest in apprehending an offender who was driving a stolen car. Nonetheless, the level of public interest in apprehending Mr Wilson did not outweigh the risks posed by the sustained high speeds reached during this pursuit. The offence the Police suspected the occupants of the Toyota of committing was not sufficiently serious that it justified speeds of 135 kph in 70 and 50 kph speed zones. The Authority finds that the risk assessments conducted by the pursuit controller and the pursuing officers were inadequate and that the pursuit should have been abandoned well before it had reached the Ohineangaanga Bridge.
273. Mr Wilson had shown no signs of stopping and there was little, if any, value in the officers continuing to pursue the Toyota 4x4 at high speeds past the first 70 kph zone sign on the approach to Te Puke. The pursuit should have been abandoned by that point. The Authority acknowledges that Mr Wilson's reaction to such abandonment cannot be established; however, what is known is that following the abandonment of stage 1 of the pursuit Mr Wilson decreased his speed to within the speed limit (see paragraph 77).
274. The risks to the public, the officers, and the occupants of the Toyota 4x4 in continuing the pursuit once it had entered the outskirts of Te Puke were unacceptably high for the following reasons:
- The pursuit was heading towards the main street of Te Puke (Jellicoe Street/State Highway 2) through a commercial/industrial area and a residential area. There are multiple side streets along Jellicoe Street where cars could have pulled out into the path of the pursuit.
  - The volume of traffic in Te Puke would have been increasing at that time of morning (around 5.30am) as people began heading to work at the local farms, orchards and factories.
  - The applicable speed limit decreases from 100 kph to 70 kph, and then to 50 kph. The roads in this area are not suitable to be driven on at speeds of 135 kph – as illustrated by the fact that Mr Wilson lost control of the Toyota 4x4 on the left hand bend prior to the Ohineangaanga Bridge.
275. Officer G (as the driver and senior officer of the lead pursuit vehicle) or the pursuit controller could have made the decision to abandon – but neither did.
276. The pursuit controller may not have been fully aware of the risks because none of the pursuing officers had reported that the speed limit had dropped to 70 kph. However he did know that the pursuit was heading into Te Puke, and should have realised that it was necessary to abandon the pursuit in sufficient time.

277. As it happened, the pursuit was abandoned when the pursuing officers misheard the safety warning given by the dispatcher (see paragraph 112). Officers E and F and Officers A and B immediately decreased their speed, pulled over to the side of the road and deactivated their warning lights and sirens.
278. Officers G and H were slowing down but had not yet had time to pull over and deactivate their patrol car's warning devices when they realised that the Toyota 4x4 had left the road and crashed down a bank.

#### FINDINGS

Based on the risks involved, the pursuit should have been abandoned by Officer G or the pursuit controller before it entered the outskirts of Te Puke.

Officers E and F and Officers A and B complied with the pursuit policy in respect of abandonment.

Officers G and H did not have enough time to fully comply with the abandonment policy before they discovered that the Toyota had crashed.



## Subsequent Police Action

INDEPENDENT POLICE CONDUCT AUTHORITY

279. Following several Police reviews of this incident, the Bay of Plenty District Commander determined that there were no criminal or Police Code of Conduct matters to be addressed.
280. Nonetheless the District Commander had several concerns about the performance of the eight officers directly involved in this pursuit. The following issues were dealt with as performance matters with the officers concerned:
- a) the (excessively high) speeds reached in the 50 kph and 70 kph zones during the first stage of the pursuit;
  - b) the conduct of the second stage of the pursuit, including the decision not to abandon when the pursued vehicle again reached speeds of around 140 kph; and
  - c) the deployment of road spikes when the pursued vehicle was travelling at over 100 kph.
281. In respect of the radio “black spot” near Te Puke (see paragraph 112), Police have advised the Authority that *“the geographical layout in this vicinity creates communications issues which are not easily fixed and have been long standing.”*





# Conclusions

282. Officers A and B were justified in attempting to stop Mr Wilson for traffic enforcement purposes. They later discovered that he was also driving a stolen vehicle.
283. Harley Wilson demonstrated by his actions that he was prepared to risk his life and the lives of others to avoid being caught by Police.
284. The pursuit comprised three different phases, and included an unsuccessful attempt to use road spikes to stop the fleeing Toyota 4x4.
285. Although the pursuing officers did consider the risks involved at each stage of the pursuit, the Authority has found that these risk assessments did not properly take into account the risk posed by the sustained high speed of the fleeing vehicle – particularly on roads with speed limits of 50 - 70 kph.
286. During stage 1, given the high speed and residential road, the pursuit should have been abandoned in the early stages when it reached speeds of 115 and 120 kph in a 50 kph area. Following this, there were several other reports of unacceptably high speed, which also should have led to the pursuit being abandoned.
287. Officers C and D should have carried out a pre-deployment check of their patrol car and the equipment carried in it before leaving the Police station.
288. During stage 2, the officers and the pursuit controller should have abandoned the pursuit once they realised that Mr Wilson had recommenced driving far in excess of the posted speed limit and had no intention of stopping for Police.
289. During stage 3, given the clear risk factors, the pursuit should have been abandoned before it reached the 70 kph speed zone on the outskirts of Te Puke.
290. The sustained high speeds reached by the pursuing officers were dangerous to the public, the occupants of the Toyota 4x4 and themselves.

### Section 27 opinion

291. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.

292. Pursuant to section 27(1) of the Act , the Authority has formed the opinion that:

- the failure by Officers A and B and the pursuit controller to abandon the pursuit during stage 1 was unjustified;
- the failure of Officers C and D to carry out a pre-deployment check of their patrol car and the equipment carried in it was undesirable;
- the attempted use of road spikes on a vehicle travelling at more than 100 kph by Officers C and D and the pursuit controller was undesirable;
- the failure by Officer E and the pursuit controller to abandon the pursuit during stage 2 was unjustified; and
- the failure by Officer G and the pursuit controller to abandon the pursuit before it entered the outskirts of Te Puke was unjustified.

# Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

293. The Authority notes that the *Fleeing Driver* policy now requires officers to continually relay the applicable speed limits during a pursuit, and therefore makes no recommendation in that respect (see paragraph 184).
294. Pursuant to section 27(2) of the Act, the Authority recommends that:
- all frontline and NorthComms staff involved in this pursuit be reminded of the risks of pursuing at such a high speed; and
  - all staff are reminded of the importance of carrying out a pre-deployment check of their patrol car and the equipment carried in it prior to use and of ensuring that the equipment carried is in a safe operating condition.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

SEPTEMBER 2012



# About the Authority

## WHAT 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 District Court Judge and has three 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.

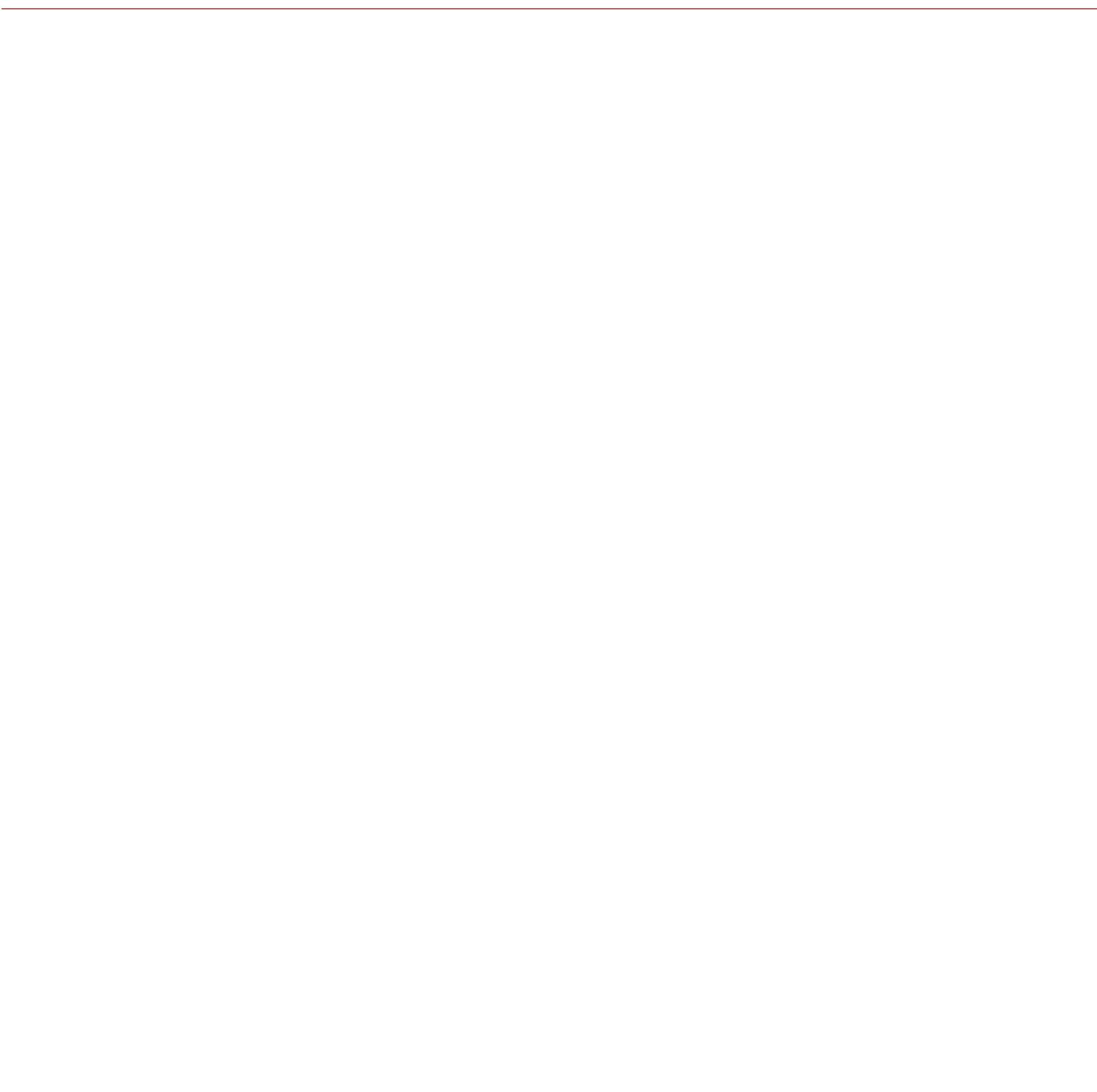
On completion of an investigation, the Authority must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



**PO Box 5025, Wellington 6145**

**Freephone 0800 503 728**

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





IPCA  
Level 8  
342 Lambton Quay  
PO Box 5025  
Wellington 6145  
Aotearoa New Zealand  
0800 503 728  
P +64 4 499 2050  
F +64 4 499 2053  
[www.ipca.govt.nz](http://www.ipca.govt.nz)