

*Independence*

*trustworthiness*

*accountability*

*vigilance*

*integrity*

Serious bodily harm to Dion Troy Batt during  
Police pursuit

February 2013

**EMBARGOED:  
NOT TO BE PUBLISHED OR  
TRANSMITTED BEFORE 12 NOON  
Monday 4 February 2013**



---

February 2013

---

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)



# Contents

INDEPENDENT POLICE CONDUCT AUTHORITY

Introduction .....	5
Executive Summary.....	9
Background .....	15
Applicable Laws and Policies.....	41
The Authority’s Investigation.....	49
The Authority’s Findings .....	51
Subsequent Police Action .....	73
Conclusions .....	75
Recommendations .....	79





# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At about 9.47pm on Saturday 27 March 2010, a motorcycle driven by Dion Troy Batt, aged 34 years, collided with a traffic island during a Police pursuit on Don Buck Road in Massey, Auckland.
2. Mr Batt sustained a severe brain injury in the crash which will require long-term treatment.
3. The Police notified the Independent Police Conduct Authority of the pursuit and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings and recommendations.

## Glossary of terms

Abbreviation/term	Explanation
ATOM	Auckland Traffic Operations Management control centre
CAD	Computer-assisted dispatch system
Eagle	Police helicopter
NorthComms	Police Northern Communications Centre
Urgent duty driving	Driving at speed (potentially above the speed limit) with red and blue warning lights and siren activated

## Index of Police staff

Communications Centre Staff	Comment
Dispatcher 1	Dispatched event for the North Shore radio channel. Controlled the event from 9.24pm to 9.41:42pm.
Dispatcher 2	Dispatched event for the Metro radio channel which at this time controlled the Motorway Group.
Dispatcher 3	Dispatched event for the West radio channel. Controlled the event from 9.41:42pm onwards.
Pursuit controller	NorthComms Shift commander.

Field Staff	Roles	Comment
Officer A Marked patrol	General duties dog handler. Conducted the first pursuit of Mr Batt (which was abandoned), then participated in the search phase. Drove towards Mr Batt after Eagle located him. Sought permission to recommence pursuit on Hobsonville Road but was ordered to abandon.	Gold licence Category A vehicle Used the North Shore and West radio channels
Officer B Police helicopter	Eagle's tactical flight officer. Located Mr Batt's motorcycle near Bawden Road on the Northern Motorway. Provided commentary from Eagle.	Front seat crewman Used the North Shore and West radio channels
Officer C Unmarked patrol	Motorway constable for the Traffic Safety Motorways Group. Drove towards Mr Batt after Eagle located him.	Gold licence Category B vehicle Used the Metro radio channel
Officer D Police motorcycle	Motorway constable for the Traffic Safety Motorways Group. Drove towards Mr Batt after Eagle located him. Conducted the second pursuit of Mr Batt on Don Buck Road.	Gold licence Category B vehicle Used the Metro radio channel
Officer E Marked patrol	Motorway constable for the Traffic Safety Motorways Group. Supervisor of Officers C and D. Drove towards Mr Batt after Eagle located him.	Gold licence Category A vehicle Used the Metro, North Shore and West radio channels

Officers F & G Marked patrol	West unit. Drove towards Mr Batt when notified about the incident and parked on Hobsonville Road.	Officer G had a Gold licence Category A vehicle Used the West radio channel
Officers H & I Marked patrol	West unit. Drove towards Mr Batt when notified about the incident and parked on Oreil Avenue. Officer H was the shift commander for the West units.	Officer I had a Gold licence Category A vehicle Used the West radio channel
Officers J & K Marked patrol	West unit. Drove towards Mr Batt when notified about the incident.	Officer J had a Gold licence Category A vehicle Used the West radio channel
Officers L & M Marked patrol	West unit. Drove towards Mr Batt when notified about the incident and set up an unauthorised road block on Hobsonville Road.	Officer L had a Gold licence Category A vehicle Used the West radio channel
Officer N	Motorway sergeant. Questioned Officer D's involvement in this incident.	Used the Metro radio channel





# Executive Summary

INDEPENDENT POLICE CONDUCT AUTHORITY

4. Officer A commenced a pursuit of Mr Batt after seeing him riding his motorcycle at an estimated speed of over 100 kph in a 50 kph speed zone. The pursuit was abandoned by the pursuit controller at the Police Northern Communications Centre (NorthComms) within three minutes.
5. A search phase began and Mr Batt's motorcycle was located by the Police helicopter (Eagle) within five minutes.
6. During the next phase of the incident Police patrol units on the North Shore channel, the Metro channel and the West channel (at least eleven units altogether) drove towards Mr Batt as he rode south on the Northern Motorway and then west on the Upper Harbour Highway and Hobsonville Road. Control of the incident passed from dispatcher 1 (North Shore channel) to dispatcher 3 (West channel) and commentary of Mr Batt's actions was provided by Eagle and the Auckland Traffic Operations Management control centre (ATOM).
7. An unauthorised road block was set up by a West unit (Officers L and M) on Hobsonville Road. Mr Batt rode through the road block and accelerated away. Officer A requested permission to recommence the pursuit but the pursuit controller ordered all units, including Eagle, to abandon.
8. Officer D began following Mr Batt on Hobsonville Road and commenced a pursuit. After one minute and eight seconds, Mr Batt's motorcycle collided with a traffic island on Don Buck Road and he suffered serious injuries.
9. The Authority's investigation considered whether Police complied with the law and pursuit policy at each stage of the incident, including:
  - the search phase;
  - the urgent duty driving phase;
  - the establishment of the roadblock; and

- the pursuits of Mr Batt by Officers A and D – specifically in relation to the commencement and recommencement of the pursuit; communication; speed and manner of driving; and the ongoing risk assessment/abandonment.

10. The Authority also examined the overall command and control of this incident by NorthComms and specific communication problems reported by Officers C and D.

### Authority Conclusions

11. Officer A was justified in attempting to stop Mr Batt on Whangaparaoa Road for traffic enforcement purposes. For the most part he complied with law and policy during the pursuit.

12. Dion Batt demonstrated by his actions that he was prepared to risk his life and the lives of others to avoid being caught by Police.

13. After the pursuit by Officer A was abandoned, a search phase began and Eagle located Mr Batt within five minutes. Patrol units on the North Shore channel and the Metro channel began urgent duty driving towards Mr Batt's location in an attempt to apprehend him. When Mr Batt turned off the Northern Motorway and headed west towards Hobsonville, West units also began driving towards Mr Batt and control of the incident was ultimately handed over to the West channel.

14. During this time, there was a lack of command and control exercised by NorthComms – largely due to the fact that the pursuit controller was not informed that Mr Batt had been located by Eagle. Other problems included that:

- multiple radio channels were running the incident simultaneously;
- there was no clear direction from dispatcher 2 that the units on the Metro channel should switch over to the West channel;
- there were too many units attending the incident, including category B vehicles;
- there was a failure by the Metro and West dispatchers to clearly articulate that the pursuit had been abandoned and was no longer active; and
- the pursuit controller took too long to intervene when he did become aware that units were following Mr Batt.

15. Two of the motorway units, Officers C and D, also reported that they experienced communication difficulties in respect of their inability to (i) change their vehicles' radio channel safely while urgent duty driving and (ii) hear the radio when the siren is activated. The Authority has concluded that Officers C and D should not have attended this fleeing driver incident because of these communication issues and the fact that they

were in single crewed, category B vehicles. See the Authority's recommendations to the Commissioner of Police at paragraphs 332(5) and 332(6).

16. As part of the attempt to stop Mr Batt, Officers L and M set up a road block on Hobsonville Road. They did not consult NorthComms or a senior officer before setting up this road block, which was not authorised by law or policy. Officer L made a high risk attempt to grab hold of Mr Batt at the roadblock but Mr Batt evaded him and rode through the road block by travelling onto the wrong side of the road.
17. After riding through the road block, Mr Batt increased his speed significantly. The pursuit controller then ordered all units, including Eagle, to abandon.
18. Officer D, however, was still on the Metro channel and did not hear this command. He began pursuing Mr Batt, and a short time later Mr Batt crashed at a roundabout on Don Buck Road and suffered serious injuries.
19. The Authority has determined that during this second pursuit, Officer D:
  - did not request permission from the pursuit controller to recommence the pursuit because he was unaware at the time that the pursuit had earlier been abandoned;
  - did not fully comply with the pursuit policy in respect of communication;
  - breached Police policy by turning off his motorcycle's siren (albeit briefly) during the pursuit;
  - reached a dangerously high speed during the pursuit (120 kph in a 50 kph zone) that was not justified in the circumstances; and
  - did not have time to fully comply with pursuit policy in respect of abandonment before Mr Batt crashed.

### **Section 27 opinion**

20. 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 that was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
21. Pursuant to section 27(1) of the Act, the Authority has formed the opinion that the following actions were undesirable:
  - Officer A did not report his estimations of Mr Batt's speed during the first pursuit.

- Officers C and D breached Police policy by not constantly using their sirens while urgent duty driving.
- Dispatcher 1 failed to advise the pursuit controller that Eagle had located Mr Batt.
- The pursuit controller took about five minutes to intervene after he first realised that patrol units were still following Mr Batt.
- NorthComms failed to assess and limit the number of patrol units (including single crewed, category B vehicles) attending this fleeing driver incident.
- NorthComms used multiple radio channels simultaneously to run this incident.
- Dispatcher 2 did not clearly direct the motorway units on the Metro channel to switch to the West channel.
- There was a lack of clear communication about what type of incident this was on the Metro channel and the West channel.
- Officer C refused to switch to the West channel when dispatcher 2 advised that it was now running the incident.
- Officer D attended this fleeing driver incident despite problems communicating when his motorcycle's siren is activated.
- Officers L and M set up a road block that was not authorised under law or policy. They did not obtain approval for this tactic from NorthComms or a senior officer.
- Officer L put himself and Mr Batt at considerable risk by attempting to grab hold of Mr Batt at the road block.
- Officer D thought he was joining in an active pursuit – consequently he did not comply with policy in respect of recommencing a pursuit.
- Officer D did not fully comply with the pursuit policy in respect of communication.
- NorthComms and other patrols were not aware that Officer D was in pursuit of Mr Batt following the order to abandon.
- Officer D breached Police policy by turning off his motorcycle's siren while engaged in a pursuit.
- Officer D reached a dangerously high speed during his pursuit of Mr Batt.

### Section 27(2) recommendations

22. Pursuant to section 27(2) of the Act, the Authority recommends that the New Zealand Police:
- 1) amend the fleeing driver policy so that dispatchers are required to:
    - give the following warning when a search phase is commenced: *“Units involved in this search phase are not to engage in urgent duty driving.”*;
    - notify the pursuit controller when the fleeing vehicle is located during a search phase; and
    - clearly state when the search phase has ended;
  - 2) review and amend the fleeing driver policy and the Police air operations policy to ensure that the role and responsibilities of Eagle during a fleeing driver incident are clearly defined;
  - 3) review and amend the fleeing driver policy to include, under the heading ‘Risk assessment factors’, consideration of the type of vehicle the offender is driving;
  - 4) review and amend the fleeing driver policy so that:
    - the pursuit controller is responsible for directing units to change radio channels during a fleeing driver incident, and is required to consider the operational capabilities of the Police vehicles involved in the pursuit before doing so; and
    - all units that have been directed to change channels must do so when appropriate and identify themselves to the dispatcher on the dedicated channel;
  - 5) review the steps needed for officers to change radio channels whilst responding to an incident to ensure that this action can be completed in a timely manner and with due regard for safety;
  - 6) review the impact the audible siren has on an officer’s ability to hear the Police radio and seek improvement to this operational capability if required; and
  - 7) clarify their policy in respect of the use of road blocks/road closures, providing an explanation of the law and whether their use during a fleeing driver incident is acceptable; and ensure that any such clarification of Police policy is reflected in officer training.





# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## THE NORTHERN COMMUNICATIONS CENTRE (NORTHCOMMS)

---

23. Within the New Zealand Police there are three communications centres, Northern, Central and Southern. This incident took place in the area controlled by the Northern communications centre (NorthComms).
24. Three different Police radio channels (North Shore, Metro, and West) were used throughout the incident. These channels were operated by three dispatchers at NorthComms. The North Shore and West dispatchers were sitting next to each other and the Metro dispatcher was on the other side of the room.
25. All Police pursuits must be reported to the relevant Police communications centre, which coordinates the pursuit and, if necessary, can order that it be abandoned. See paragraphs 179-180 for a description of the roles of pursuit controller and dispatcher.

## SUMMARY OF EVENTS

---

### Pursuit on Whangaparaoa Road

During this phase of the incident, Officer A commenced a pursuit of Mr Batt after seeing him riding his motorcycle at an estimated speed of over 100 kph in a 50 kph speed zone. The pursuit was abandoned by the pursuit controller within three minutes.

26. On the evening of Saturday 27 March 2010, Officer A, a Police dog handler, was travelling west on Whangaparaoa Road in the Stanmore Bay area. He was driving a category A marked Police dog wagon. A category A car is authorised to be the lead car in pursuits.
27. Officer A is certified as a gold licence holder, having been trained under the Professional Police Driver Programme (PPDP), and is therefore qualified to engage in pursuits as the lead driver. As Officer A was the sole occupant of the car, he was also responsible for operating the radio and communicating with NorthComms.

28. Whangaparaoa Road is a two-way road (one lane in either direction) with a flush median strip painted down the middle.
29. At approximately 9.24pm, Officer A saw an approaching motorcycle cross the painted flush median strip and enter the westbound lane while overtaking two vehicles. He estimated the motorcyclist's speed to be over 100 kph in a 50 kph zone.
30. Officer A decided to pull the motorcyclist over for dangerous driving. He completed a u-turn and activated his patrol car's red and blue warning lights and siren. The officer then followed the motorcycle as it continued travelling east at high speeds.
31. Using the North Shore radio channel, Officer A advised the NorthComms dispatcher (dispatcher 1) that he was on Whangaparaoa Road heading towards Army Bay and said: *"I've just turned to stop a motorbike and he's legged it on me"*.
32. Dispatcher 1 alerted the NorthComms shift commander (the pursuit controller) that a pursuit had been commenced. The pursuit controller came over to dispatcher 1's desk to supervise the pursuit.
33. Officer A lost sight of the motorcycle as it went over the crest of a hill near Arklow Lane. When the officer reached the top of the hill, he saw the motorcyclist exit a driveway at the Totara Road intersection and turn back onto Whangaparaoa Road, now heading west. Officer A again turned his car around in order to follow the motorcycle. At 9.25:06pm he gave dispatcher 1 the motorcycle's registration number and explained that he was now heading towards Orewa. He also identified the motorcycle as a Harley Davidson.
34. Dispatcher 1 asked Officer A to confirm that he was in pursuit of the motorcycle. He replied: *"Yeah in pursuit of that vehicle, speed 90 kilometres per hour. One vehicle on the road"*. Officer A later said in his Police statement that Mr Batt quickly reached a speed of 110 kph in a 50 kph zone – however this speed was not reported to NorthComms.
35. 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."*
36. Dispatcher 1 issued the required warning and Officer A acknowledged it. The officer then provided his driver certification and vehicle classification (gold and A), and said that he had commenced the pursuit because *"... this guy was driving like an idiot heading towards me"*.
37. As Officer A followed the motorcycle through the intersection of Whangaparaoa Road and D'Oyly Drive, he reported to dispatcher 1 that his speed was 100 kph in a 60 kph zone. Officer A described the motorcyclist's driving to dispatcher 1 as: *"He's staying pretty*

*much within his lane, he's using a little bit of the flush median strip ... staying generally on his side of the road".*

38. Officer B, the tactical flight officer aboard the Police helicopter (Eagle) had heard about the pursuit while scanning the Police radio. At 9.26:32pm he asked for the location of the pursuit and Officer A told him they were approaching Vipond Road.
39. The level of traffic increased at this stage of the pursuit and the motorcycle and the patrol car overtook several vehicles. Officer A reported this to dispatcher 1 and advised that the motorcyclist was *"driving fine at this stage"*. In his statement Officer A said that Mr Batt increased his speed to 120 kph (in a 60 kph zone) in the vicinity of Vipond Road – however this speed was not reported to NorthComms.
40. At 9.26:52pm, dispatcher 1 advised Officer A that the Harley Davidson was registered to Dion Troy Batt at a Raglan address and that it had a non-operation order.<sup>1</sup>
41. Officer A asked Officer B about Eagle's position over the radio, and he replied: *"...at North Head"*. Officer A then said: *"Overtaking vehicles, speed 100 kilometres per hour still, still 60 k zone. We're on a dual carriageway over."*
42. At 9.27:25pm, the pursuit controller ordered that the pursuit be abandoned and dispatcher 1 radioed this order to Officer A. The pursuit controller later gave a number of reasons for his decision to abandon the pursuit, including that:
  - the reason for commencing the pursuit did not justify the speeds reached;<sup>2</sup>
  - there was the potential that the volume of traffic would increase at that time of the evening;
  - they had identified the registered owner of the motorcycle and his address so would be able to conduct further enquiries later; and
  - the risks involved in the pursuit outweighed the immediate need to apprehend the motorcyclist.
43. Upon hearing the call to abandon the pursuit, Officer A decreased his speed and turned off his patrol car's warning lights and siren, as required under Police policy. He pulled over

---

<sup>1</sup> The non-operation order was issued at Te Puke on 20 March 2010. The defect which resulted in the order was a modified exhaust but this was not relevant to the events described in this report.

<sup>2</sup> When interviewed a few days after this incident, the pursuit controller said that he thought the reported speed was 140 kph. He used this high speed as one of several reasons to abandon pursuit. In fact, the top speed reported by Officer A at the time was 100 kph. In the Authority's view, the decision to abandon pursuit was correct, regardless of the pursuit controller's misunderstanding about the actual speed (see paragraphs 218-222 below).

to the side of the road and stopped his vehicle near the intersection of Whangaparaoa Road and Red Beach Road. Eagle had not yet reached the scene at this time.

44. The pursuit lasted about three minutes and covered a distance of approximately four kilometres.

#### *Significant times*

	<b>North Shore channel</b>
9.24:44pm	Officer A advises dispatcher 1 that he is following a motorcycle which has failed to stop.
9.25:20pm	Officer A confirms to dispatcher 1 that he is in pursuit.
9.25:27pm	Dispatcher 1 issues a pursuit warning.
9.25:32pm	Officer A acknowledges the pursuit warning.
9.26:32pm	Eagle asks for the location of the pursuit, which is provided by Officer A.
9.26:52pm	Dispatcher 1 broadcasts that the motorcycle is registered to Mr Batt.
9.27:25pm	Pursuit controller abandons the pursuit.
9.27:33pm	Officer A acknowledges the order to abandon and carries out the abandonment procedure.

#### **Events following the pursuit – search phase**

During this phase of the incident, a search phase began and Mr Batt's motorcycle was located by Eagle within five minutes.

45. After hearing Officer A acknowledge the order to abandon the pursuit, the pursuit controller left dispatcher 1's desk and returned to his own work station at NorthComms. He did not become involved in the radio communications again until about 12 minutes later (see paragraphs 130-134).
46. Officer A reported that Mr Batt was headed towards State Highway 1 and asked the dispatcher for permission to drive off *"as per normal"*. At 9.27:47pm dispatcher 1 replied: *"Affirmed, just go into surveillance mode"*.
47. Surveillance mode (or 'search phase') means that Police units in the area are directed to look for the vehicle that has evaded Police but are not allowed to engage in urgent duty driving while doing so. Urgent duty driving involves driving at speed with the patrol car's warning lights and siren activated (see paragraphs 188-191 and 194-198 for policy).
48. From around 9.28pm, Eagle and Police patrol units began searching for Mr Batt's motorcycle. NorthComms also advised the Auckland Traffic Operations Management control centre (ATOM) of the situation. ATOM monitors Auckland's motorways and key regional arterial routes. It is run by the New Zealand Transport Agency and has a control

centre operating 24 hours a day. It operates with vehicle detection technology, cameras, and communications links with Police and other emergency services.

49. Officer A drove south on the Hibiscus Coast Highway then turned onto the East Coast Road in an effort to locate Mr Batt. At 9.28:43pm, using the North Shore radio channel, he advised Eagle that Mr Batt's motorcycle had "ape hanger" handle bars.
50. Dispatcher 1 advised the dispatcher for the Metro radio channel (which, at the time of this incident, controlled the Auckland Motorway patrols) that the motorcycle was thought to be on the motorway. At 9.30:50pm the Metro dispatcher (dispatcher 2) broadcast a description of Mr Batt's motorcycle and advised all units to "keep an eye out" for it, stating: "This motorbike was involved in a pursuit a short time ago in the Army Bay area. The pursuit was abandoned on Whangaparaoa Road."
51. Although the motorway units on the Metro channel had been advised by dispatcher 2 to be on the lookout for the motorcyclist, control of the incident remained with dispatcher 1 on the North Shore channel.
52. At 9.32:30pm Officer B aboard Eagle identified Mr Batt's motorcycle travelling south past Bawden Road on the Northern Motorway.
53. Eagle's role during a fleeing driver situation is to provide aerial surveillance and to take primary responsibility for providing a commentary of the fleeing vehicle's actions (see paragraph 192 for policy). In this case, although a pursuit was not technically underway at the time, Officer B began providing a commentary of Mr Batt's actions to dispatcher 1 and patrol units on the North Shore radio channel.
54. The use of Eagle in a fleeing driver situation is a tactical option. Although the Police pursuit policy clearly states that it is the pursuit controller's responsibility to select and implement appropriate tactics during a pursuit (see paragraph 180), it does not explicitly require Eagle to request permission from the pursuit controller before they begin following a fleeing vehicle.
55. Dispatcher 1 did not advise the pursuit controller that the motorcycle had been located by Eagle. If a Police unit on the ground had located Mr Batt, they would have needed permission from the pursuit controller before they could recommence the pursuit, because the pursuit had earlier been abandoned (see paragraph 189 for policy). In this instance, however, because it was Eagle that had located Mr Batt, and the Police units on the ground were not yet close enough to pursue him, the need to alert the pursuit controller to the situation appears to have been overlooked by dispatcher 1 (see the Authority's findings at paragraphs 235-239).
56. In the course of the Authority's investigation, it emerged that there was some confusion amongst Police and communications centre staff about whether the 'search phase' policy

continued to apply after Eagle had located Mr Batt, and up until the point where a patrol unit on the ground got close enough to signal him to stop and potentially recommence the pursuit. If the search phase policy had continued to apply, the subsequent urgent duty driving by numerous officers towards Mr Batt (described in the next section of this report) would have been in breach of that policy.

57. The Authority's view is that, in these particular circumstances, once Mr Batt's location was known to Police the officers cannot be said to have been searching for him. Therefore the search phase ended at this point and the ensuing urgent duty driving by patrol units was not in breach of policy.

### *Significant times*

	North Shore channel	Metro channel
9.27:47pm	Dispatcher 1 advises Officer A to go into "surveillance mode". Units in the area (including Eagle) begin looking for Mr Batt's motorcycle.	
9.28:43pm	Officer A advises Eagle that Mr Batt's motorcycle has "ape hanger" handle bars.	
9.28:58pm	Dispatcher 1 confirms that ATOM is aware Police are looking for Mr Batt's motorcycle.	
9.30:50pm		Dispatcher 2 advises motorway units to be on lookout for Mr Batt's motorcycle, which has been involved in a pursuit that was abandoned.
9.32:30pm	Officer B aboard Eagle advises dispatcher 1 that they have located Mr Batt and begins providing a commentary.	

### **Urgent duty driving towards Mr Batt**

During this phase of the incident Police patrol units on the North Shore channel, the Metro channel and the West channel (at least eleven units altogether) drove towards Mr Batt as he rode south on the Northern Motorway and then west on the Upper Harbour Highway and Hobsonville Road. Control of the incident passed from dispatcher 1 (North Shore channel) to dispatcher 3 (West channel) and commentary of Mr Batt's actions was provided by Eagle and ATOM.

58. Once Mr Batt had been located by Eagle, the 'search phase' ended and patrol units were able to commence urgent duty driving (i.e. driving at speed with the lights and siren activated) towards Mr Batt in order for one of them to get close enough to signal him to

stop. If he then failed to stop, the patrol unit would have to ask the pursuit controller for permission to recommence the pursuit (see paragraphs 187 and 189 for policy).

59. For ease of reference, this section of the report is divided into three subsections which explain what was happening on each of the three radio channels involved.

#### *North Shore channel*

60. Upon hearing on the North Shore channel that Mr Batt's motorcycle had been found on the motorway (at 9.32:30pm), Officer A commenced urgent duty driving towards the motorcycle's location. When interviewed by Police he said that he had wanted to: *"... get into a position where if the pursuit was re-engaged or if the bike was abandoned, then I could utilise my skills as a dog handler to apprehend the offender should the opportunity arise."* It was not until about 12 and a half minutes later that Officer A caught up with Mr Batt and asked if he could recommence the pursuit (see paragraph 129).
61. At least two other units on the North Shore channel also decided to drive towards Mr Batt's location and communicated with dispatcher 1 about attending the incident.
62. At 9.34:03pm, Eagle started recording Mr Batt with its Forward Looking Infrared (FLIR) camera system. At the time of this incident live images from the FLIR system were being sent to a monitor at NorthComms.<sup>3</sup> This monitor could be seen from the pursuit controller's desk but not from the dispatchers' desks. As discussed above, the pursuit controller was busy with other tasks and was not informed that Eagle had located Mr Batt; consequently he did not notice the FLIR footage of this incident until later (see paragraph 133).
63. From his position aboard Eagle, Officer B provided updates to units on the North Shore channel about Mr Batt's manner of riding, speed and location. As Mr Batt rode south on the Northern Motorway, he overtook or undertook all vehicles that were in front of him. At 9.34:27pm Officer B reported that Mr Batt was *"Just going over Oteha Valley, still southbound on the motorway, going pretty quick."*
64. At 9.35:35pm, Officer A asked dispatcher 1 whether motorway units had been advised about the motorcycle and dispatcher 1 confirmed that they had.
65. Mr Batt turned off the Northern Motorway at the Constellation Drive off-ramp at around 9.36pm. As Mr Batt turned right onto the Upper Harbour Highway, heading west, Officer B aboard Eagle reported that he had gone through a red light. At the intersection with

---

<sup>3</sup> The trial period for sending live FLIR footage from Eagle to NorthComms has ended and such footage is no longer sent to NorthComms however it is still recorded for investigative purposes.

Caribbean Drive, Mr Batt again went through a red light once traffic had cleared ahead of him. This was also reported on the North Shore channel by Officer B.

66. At 9.36:44pm, Officer A momentarily switched over to the West radio channel to notify the West dispatcher (dispatcher 3) that the motorcycle was heading into her area (see paragraph 110 onwards for discussion of what happened on the West channel).
67. At 9.38:21pm, dispatcher 1 advised the North Shore units: *"We've got motorways diverting back to Hobsonville and Upper Harbour"*. Officer B aboard Eagle then reported that Mr Batt was still travelling west on the Upper Harbour Motorway at about 100-120 kph. He was starting to weave through traffic and was travelling a bit faster than the traffic flow in the fast lane.
68. At 9.39:15pm, one of the North Shore units advised dispatcher 1 that he was half a kilometre to a kilometre behind Mr Batt and that he would *"just hang here"*.
69. Mr Batt rode across the Greenhithe Bridge towards Hobsonville Road. At 9.40:53pm, Officer B aboard Eagle asked dispatcher 1 whether she wanted to continue controlling the event on the North Shore channel, or switch it over to the West channel, but he received no response. Officer B repeated the question about 30 seconds later and dispatcher 1 then directed him to change over to the West channel.
70. Officer A and two other North Shore units then notified dispatcher 1 that they were also going to switch over to the West channel.
71. As discussed above, dispatcher 1 did not tell the pursuit controller that Eagle had located Mr Batt. The pursuit controller was the person responsible for supervising and coordinating the overall response to the incident (see paragraph 180), and he should have been involved in making the decision to switch radio channels.
72. Ideally dispatcher 1 would have given a clear direction to all units involved in the incident to switch over to the West channel and identify themselves to the West dispatcher (dispatcher 3). In this case dispatcher 3 was aware that Officer A was attending the incident from previous communications but the other two North Shore units did not advise her that they were attending or otherwise communicate with her at any stage.

#### *Metro (Motorways) channel*

73. Meanwhile, at 9.33:05pm on the Metro radio channel, dispatcher 2 had informed motorway units that he had been *"advised by North dispatcher this motorbike involved in the pursuit is now on the motorway"*. At least four units (including Officers C, D and E) heard this message and decided to attend the incident.

74. Officers C and D were both northbound on the Southern Motorway (about 25 to 30 kilometres away from Mr Batt's reported location on the Northern Motorway) when they heard the message. They had just finished conducting a traffic stop together near the Tecoma Street off ramp. Officer C was driving an unmarked patrol car and Officer D was riding a Police motorcycle, both of which are category B vehicles. Category B vehicles may be used in pursuits but must be replaced by category A vehicles as soon as possible (see paragraph 182 for policy).

75. At 9.33:22pm Officer C asked dispatcher 2: *"What's this going on with the pursuit because I've got a motorcyclist with me."* Dispatcher 2 replied:

*"A pursuit involving a motorbike happened a short time ago in Army Bay. Pursuit was abandoned, Eagle now has obs on this motorbike, it's southbound, just coming through Bawden Road. If we can get any units."*

76. When interviewed by Police and the Authority, Officer C said he thought at the time that the pursuit of the motorcycle was active – even though dispatcher 2 had said that the pursuit was abandoned twice: firstly when alerting units about the motorcycle at 9.30:50pm and secondly in response to Officer C's own query about the pursuit at 9.33:22pm.

77. Officer C explained that he may not have heard the first mention of the pursuit being abandoned because he was finishing up the traffic stop with Officer D at the time. He further explained that, from what he heard in dispatcher 2's response to his question about the pursuit at 9.33:22pm, he believed the pursuit had been recommenced and was active because Eagle was following the motorcycle:

*"...as far as I recall the pursuit was still going on, it's been abandoned, it's been recommenced, we've not been given full information. Cause if Eagle's following that vehicle then they've recommenced the pursuit and obviously they've got somebody or something other than Eagle following it."*

78. Officer C has said that his intention was to head north and be an observer but not to become involved in the pursuit itself as he was driving an unmarked, category B vehicle (see paragraphs 181-182 for policy). Officer C also said that he had mentioned to the dispatcher that he had a Police motorcyclist (Officer D) with him because: *"... it is easier for the motorcyclist to progress through the traffic safely to get to where he can be an observer and set up and literally just watch what is going on."*

79. Officer C described the 'observer' role as assisting with the pursuit by potentially:

- blocking off roads;

- helping to search for the fleeing vehicle if Police lose sight of it during the pursuit; and/or
- chasing the offending driver if he or she tries to escape on foot.

He stated: *"...in a [category] B vehicle I wouldn't get involved in a pursuit, my role would literally be to stop, park up and just listen or block a road."*

80. The Authority notes that employing this observer role is not included as an authorised tactic in the pursuit policy. Officer C did not communicate his intention to be an observer to dispatcher 2 (see paragraphs 261-269 and 284-286 for further discussion).
81. The Police motorcyclist, Officer D, also denied being aware that the pursuit of the motorcycle had been abandoned when interviewed by Police and the Authority. He said that he did not hear the first message about the motorcycle at 9.30:50pm because he had just conducted the traffic stop with Officer C and was disconnected from the radio on his Police motorcycle. He then plugged back into the radio and heard about the motorcycle when Officer C asked about it at 9.33:22pm. He did not, however, hear that the pursuit of the motorcycle had been abandoned. He thought that an active pursuit was underway and that he was being specifically requested by NorthComms to attend the incident because as a Police motorcyclist he was the *"most likely"* to stop a fleeing motorcycle.
82. In his Police interview Officer D explained that he thought NorthComms were deploying him as part of an agreed tactical plan because:

*"From operational experience any motorcycle who has known that I am there has always stopped. A motorcycle will outmanoeuvre a car the majority of the time through traffic. If a motorcycle appears, a Police motorcycle, even the Hells Angels stop for us. They don't mess around, they just pull over. We're in a like vehicle."*

83. Officer D has assumed that the other staff involved in the incident were of the same mind as him – however there was no specific direction from dispatcher 2 that Officer D or any other Police motorcyclist should attend this incident. Officer C did mention in his message at 9.33:22pm that he had a motorcyclist with him, but as explained above, he had more of a supporting role in mind for Officer D.
84. According to the audio recording and transcript of the Metro channel radio transmissions, Officer D responded to dispatcher 2's request for units by saying: *"I'll make it north over the bridge to have the best chance of catching it."* When interviewed by Police and the Authority, Officer D said that the transcript was incorrect and that before the words *"I'll make it north over the bridge..."* he said *"Do you want me to..."*, and that NorthComms replied *"Yes"*.

85. Officer D has asserted that he always asks NorthComms if they want him to attend any incident that is not in his local proximity because they have more information about the situation and the number of units that are already attending than he does. After listening to the audio recordings of the relevant transmissions, he still maintains that the reason his question was not recorded is that his transmission must have been clipped over by another unit or by the NorthComms dispatcher. He has stated that being clipped over while using the old analogue radio system was a common occurrence.<sup>4</sup>
86. The Authority has listened to the audio recordings of the NorthComms transmissions during this incident. The recording of the transmissions on the Metro channel from 9.33:22pm to 9.33:56pm indicates that Officer D responded immediately to dispatcher 2's request for units (within one to two seconds). There does not appear to be enough time in the recording for Officer D to have asked dispatcher 2 whether he wanted him to attend the incident. There is also no evidence of a response to that question from dispatcher 2.
87. On this particular occasion, Officer D does not appear to have asked dispatcher 2 whether he should attend. Nonetheless, the Authority recognises that dispatcher 2 did request motorway units to attend the incident and that Officer D was given no indication that he should not attend.
88. Officers C and D did not ask, and were not told, why Police wanted to stop the motorcyclist. They both realised that the motorcycle was heading in their direction on the motorway and thought they could help out with the incident, so they activated their warning lights and sirens and began urgent duty driving north towards the motorcycle. For further discussion about the officers' decision to attend this incident see the Authority's findings at paragraphs 284-286.
89. Officer E, who was driving a marked patrol car, also activated his warning lights and siren and headed towards Mr Batt. At 9.33:57pm on the Metro channel, he asked "*What channel is [this incident] being run off?*" and dispatcher 2 replied "*North Shore at present.*" Officer E then kept his car radio tuned to the Metro channel but switched his portable radio to the North Shore channel, so he could hear what was happening on both channels.
90. As a matter of good practice, Police radio communications for a fleeing driver situation should stay on a single radio channel – so that all units who are responding to the incident are aware of the same information and the dispatcher (and pursuit controller)

---

<sup>4</sup> Police have since upgraded to a digital radio system.

can manage and control all the units who are attending. While control of the incident may need to be passed from one channel to another when the incident moves into a new area, as happened in this case (North Shore to West; see paragraph 69), there should not usually be multiple radio channels simultaneously running the same incident.

91. Ideally all the motorway units who had decided to attend the incident would have switched over to the North Shore channel at this point – and dispatcher 2 would have clearly directed them to do so. However, Officers C and D (and at least one other motorway unit) stayed on the Metro channel. Officer E was the only one who began monitoring the North Shore channel.
92. Officer D later said he thought the Metro channel was the right channel to use because it was continually providing updates about the motorcycle's location. He could not remember hearing that the incident was being run off the North Shore channel but said that if he had heard it, and had been directed to change from the Metro channel to the North Shore channel, he would have done so.
93. At 9.34:02pm dispatcher 2 told the motorway units that the motorcycle was now approaching Oteha Valley Road and again provided a description of the motorcycle including its registration number. He then said: *"Comms calls any units currently on the North Shore, be advised this pursuit, sorry this motorbike is coming through. Eagle have obs."*
94. This statement about there being a *"pursuit"* may have reinforced Officers C and D's belief that the pursuit was still active. Dispatcher 2 did correct himself by referring to the *"motorbike"* instead, but did not repeat that the pursuit had actually been abandoned. After this point, the fact that the pursuit of the motorcycle had earlier been abandoned was not mentioned again on the Metro channel.
95. The Authority notes that, while Officer D has said that he believed there was an active pursuit of Mr Batt, there was never any commentary on the Metro channel from pursuing Police units or from Eagle. Over time this should have led him to question (i) whether he was on the correct radio channel, or (ii) whether the motorcyclist was actually involved in an active pursuit. When interviewed by the Authority, Officer D said that he had been asked to attend the incident on the Metro channel, and he was being updated on that channel, so it did not occur to him that the incident was being run from another channel.
96. At 9.35:09pm, ATOM (see paragraph 48) advised dispatcher 2 that they had observations on Mr Batt and began providing updates on his location. Both Officer C and Officer D asked ATOM to keep the updates coming because it would be difficult for Officer D to use the radio while riding his motorcycle towards the incident.

97. At 9.36:10pm ATOM advised that the motorcyclist had turned off the motorway, and 20 seconds later reported that he had turned right into Constellation Drive (now known as the Upper Harbour Highway). At 9.37pm, ATOM advised that the motorcyclist had gone through a red light at the intersection with Caribbean Drive (see paragraph 65).
98. Officer D advised dispatcher 2 at 9.37:14pm that he would “*take the western [motorway] and head up towards Hobsonville*”. At 9.37:27pm Officer C said he would do the same thing.
99. At 9.40:15pm dispatcher 2 advised units on the Metro channel that Mr Batt was “*still heading towards the bridge*”. Officer D (with a loud siren sounding in the background during his transmission) asked which bridge but did not receive a response. At 9.40:28pm Officer D repeated his question (the siren can no longer be heard in the background), and shortly afterwards dispatcher 2 replied that it was Greenhithe Bridge.
100. For safety reasons, Police policy requires that officers must have their warning lights and siren activated at all times when they are urgent duty driving (see paragraph 198). Officer D later explained to the Authority that he finds it too difficult to hear messages and communicate over the radio while his motorcycle’s siren is activated, because it is very loud, so he generally slows down and switches the siren off (but keeps the warning lights on) when he needs to transmit or hear a message over the radio while urgent duty driving.
101. Officer C also advised the Authority that he used his siren intermittently while urgent duty driving towards Mr Batt. He said:

*“... if you are on the motorway sirens aren’t heard by most vehicles....  
... if you’re travelling at high speed you can have them on but it depends,  
... I can’t tell you whether the drivers in front of you can hear them, only  
from previous experience that the drivers in front of you will not be able  
to hear those sirens because of wind noise and whatever else ... it’s  
being pushed behind.”*

For further discussion on this point, see paragraphs 231-232.

102. At 9.42:20pm dispatcher 2 advised the motorway units: “*Motorbike has just passed Hobsonville air field. The job is now being run off Auckland West.*” Officer D asked dispatcher 2 to repeat the message and the dispatcher replied: “*This motorbike has just passed Hobsonville air field ...*”, but did not repeat that the event was now being controlled by the West channel. Nor did dispatcher 2 explicitly direct the units involved to switch to the West channel.

103. As discussed earlier (see paragraphs 90-91), ideally the motorway units would have switched from the Metro channel to the radio channel that was controlling the incident and dispatcher 2 would have ensured that they did so. In this case Officer E switched his portable radio from the North Shore channel to the West channel but neither Officer C nor Officer D switched their vehicles' radios from the Metro channel to the West channel.
104. Officer D has said that he did not change channels because he did not hear dispatcher 2 say that the incident was being run on the West channel. He advised the Authority that if he had heard the message he would have changed channels. Officer C, on the other hand, told the Authority he remembered advising dispatcher 2 at the time that he was not going to switch channels. There is no evidence of this in the audio recordings of the transmissions on the Metro channel but Officer C has suggested that his transmission may not have gone through if other officers were simultaneously trying to transmit a message.
105. Officer C explained that he would have refused to switch channels because he feels it is unsafe for him to look down at his patrol car's radio and change channels while he is urgent duty driving. He believes that it is easier for the dispatchers at NorthComms to talk to each other and pass information to him than it is for him to change channels.
106. Officer D has also expressed reservations about using the radio on his Police motorcycle while urgent duty driving:

*"The problem you have with the motorcycles is actually changing channel. We've highlighted that with the radios as well but the current system to change channel you have to fit your hand underneath the guard and change channel by pushing a button. Obviously when you're riding along this is quite difficult. The radio I had at the time had no backlight on it so it makes it irrelevant to change the channel unless you stop, get your torch out and change ... it's just not safe [to change channels while riding] so I don't."*

For further discussion on this issue, see the Authority's findings at paragraphs 270-277.

107. At 9.42:43, Officer D advised dispatcher 2 that he would be at Hobsonville Road "pretty shortly". For a description of Officer D's actions after this point, see paragraph 136 onwards.
108. At 9.43:13pm a motorways sergeant, Officer N, radioed dispatcher 2 on the Metro channel and asked the dispatcher to phone him. During the call dispatcher 2 explained that: "...the bike isn't actually being pursued, it's just being followed with obs from Eagle and a couple of Shore units ... it's just being followed, but no one's pursuing it as such ... at this stage no decision's been made as to how we're planning on stopping it."

109. Officer N questioned the involvement of the Police motorcyclist (Officer D) in this event, saying that he: “... *probably shouldn’t engage in any pursuit at all ....*” Officer N then said: “*but then again they’re reasonably handy for motorcycles so ... Okay well I’ll leave you to it*”.

#### *West channel*

110. As mentioned above in paragraph 66, Officer A had radioed dispatcher 3 on the West radio channel at 9.36:44pm and asked whether dispatcher 1 had advised her about the motorcycle, which was now heading into her area. Dispatcher 3 replied that she had overheard the incident and asked where the motorcycle was now. Officer A said the motorcyclist had turned off the motorway and was possibly headed for Greenhithe, and asked if there were any free West units.
111. During the next five minutes, three different radio channels (North Shore, Metro and West) were simultaneously handling communications for this incident. As discussed above, the Authority’s view is that all communications for a fleeing driver incident (whether or not a pursuit has been formally commenced) should be on a single channel. For the Authority’s findings on this issue, see paragraphs 247-254.
112. Four West units, all double-crewed, category A marked patrol cars, heard Officer A’s message about the motorcycle on the West channel. They activated their warning lights and sirens and began urgent duty driving towards Mr Batt’s location. They were not advised at this time by Officer A or by dispatcher 3 that the motorcyclist had earlier been involved in a pursuit that was abandoned and had not yet been recommenced.
113. Between 9.37pm and 9.38pm, three of the responding West units (Officers F and G, H and I, and J and K) advised dispatcher 3 that they would attend the incident. The fourth West unit, Officers L and M, did not advise dispatcher 3 they were attending (but later reported their location to dispatcher 3; see paragraph 117).
114. At 9.39:40pm on the West channel, Officer A advised the West units that the motorcycle was being observed by Eagle and that Mr Batt was heading towards the Greenhithe Bridge, which, at the time of this incident, led directly onto Hobsonville Road. Hobsonville Road has a speed limit of 50 kph. It was at this point that the pursuit controller became aware that this fleeing driver incident was continuing (see paragraphs 133 - 134 and 241 for detail).
115. At 9.41:42pm control of the incident was passed from dispatcher 1 on the North Shore channel to dispatcher 3 on the West channel. Officer B began transmitting his commentary from Eagle on the West channel, saying: “*Just changed over from North following a motorcycle from an abandoned pursuit....*” This was the first time it was mentioned on the West channel that the pursuit of the motorcycle had earlier been

abandoned (five minutes after Officer A asked if there were any free units – see paragraph 110).

116. At around 9.42pm, the West units began taking up positions in Hobsonville in anticipation of Mr Batt’s arrival. The first unit (Officers F and G) parked their patrol vehicle by the fire station at 21 Hobsonville Road, near the entrance to State Highway 16. A second unit (Officers H and I) parked their patrol car at the entrance to Oreil Avenue, about 75 metres east of the fire station. These two units both turned off their lights and sirens once they had parked their vehicles.
117. The third unit (Officers J and K), was still travelling north towards Hobsonville on State Highway 16. The fourth unit (Officers L and M) advised dispatcher 3 that they were at the intersection of Luckens Road and Hobsonville Road at 9.43:12pm. This location was about one kilometre east of the first and second West units, and closer to Mr Batt who was riding west on Hobsonville Road at this time.
118. According to the officers’ statements, the third and fourth units both thought the motorcycle was being actively pursued, despite the message broadcast by Officer B on the West channel at 9.41:42pm that the motorcycle was from an abandoned pursuit (see paragraph 115).

### Significant times

	North Shore channel	Metro channel	West channel
9.33:05pm		Dispatcher 2 advises units that the <i>“motorbike involved in the pursuit”</i> is now on the motorway.	
9.33:22pm		Officer C asks dispatcher 2 <i>“What’s this going on with the pursuit?”</i>	
9.33.32pm		Dispatcher 2 advises that the motorcycle has been involved in a pursuit that was abandoned and asks if any units are available to attend.	
9.33:48pm	Officer B aboard Eagle continues commentary of Mr Batt’s actions.	Officer D says: <i>“I’ll make it north over the bridge to have the best chance of catching it.”</i>	
9.33.57pm		Officer E asks: <i>“What channel is it being run off?”</i> and dispatcher 2 replies: <i>“North Shore at present.”</i>	

9.34:03pm	Eagle starts recording Mr Batt riding south on the Northern Motorway.		
9.34:18pm		Dispatcher 2 says "...be advised this pursuit, sorry this motorbike is coming through."	
9.34:27pm	Officer B reports that Mr Batt is "going pretty quick".		
9.35:09pm		ATOM advises that they have observations on Mr Batt and starts giving a commentary.	
9.35:35pm	Dispatcher 1 confirms to Officer A that motorway units have been advised.		
9.35:56pm		Officer C and Officer D ask for ATOM to keep the updates coming because Officer D will have difficulty using the radio while riding a motorcycle.	
9.36:36pm	Officer B reports that Mr Batt appears to be going through red lights after leaving the motorway and turning right on to Constellation Drive.		Officer A asks dispatcher 3 whether she has been advised of the motorcycle heading into her area, and asks if she has any free units.
9.37:00pm	Officer B reports that Mr Batt has gone through another red light at Caribbean Drive.	ATOM reports that Mr Batt has gone through a red light at the Caribbean Drive intersection. Officers C and D advise dispatcher 2 that they will head west towards Hobsonville.	West units begin to notify dispatcher 3 that they will attend the incident.
9.38:21pm	Dispatcher 1 advises that motorway units are heading to Hobsonville. Officer B reports that Mr Batt is travelling at about 100-120 kph and starting to weave again.		
9.39:40pm			Officer A advises West units that Mr Batt is being observed by Eagle and heading towards the Greenhithe Bridge. The pursuit controller overhears this communication.

9.40:15pm		Dispatcher 2 advises the motorway units that Mr Batt is heading towards Greenhithe Bridge.	
9.41:42pm	Officer B (Eagle) switches to West channel. Control of the incident is passed to West channel.		Officer B advises that has just changed over from the North Shore channel, <i>“following a motorcycle from an abandoned pursuit”</i> . West channel is now running the incident.
9.42:20pm		Dispatcher 2 advises the motorway units that the motorcycle has just passed Hobsonville airfield and the incident is now being run by the West channel. Officer D asks the dispatcher to repeat the message – but he only repeats the part about the location of the motorcycle.	West units begin taking up their positions in Hobsonville.
9.43:12pm		Officer N asks dispatcher 2 to call him. During the call Officer N questions Officer D’s involvement in a pursuit and dispatcher 2 explains that it is not a pursuit as such.	Officers L and M report that they are at the intersection of Luckens Road and Hobsonville Road.

### Road block and call to abandon

During this phase of the incident, an unauthorised road block was set up by a West unit (Officers L and M) on Hobsonville Road. Mr Batt rode through the road block and accelerated away. Officer A requested permission to recommence the pursuit but the pursuit controller ordered all units, including Eagle, to abandon.

119. At around 9.44pm, Officer L decided to set up a road block on Hobsonville Road in an attempt to stop Mr Batt. He parked his patrol car (with its red and blue warning lights activated) next to a traffic island about 100 metres east of the Luckens Road intersection, blocking the westbound lane.
120. A road block is defined in section 317B of the Crimes Act 1961 as *“any form of barrier or obstruction preventing or limiting the passage of vehicles”*. Section 317B permits the use of road blocks when Police suspect a person has committed an offence punishable by a

term of imprisonment of seven years or more, or is unlawfully at large; neither situation applied in this case (see paragraphs 199-200).

121. When interviewed, Officer L said he thought he was legally empowered to set up a “stationary road closure” under section 35 of the Policing Act 2008 (see paragraph 201). He said:

*“... what I wanted to do was obviously make it safe for the public and have him stop. Maybe he would have stopped and this whole thing would have been avoided. Yeah, worried about the public, worried about him crashing into someone, just wanted it to end and to have him stop so I made that road block under the Policing Act.”*

122. The Authority’s view, however, is that section 35 does not apply to a fleeing driver situation (see the Authority’s findings at paragraphs 287-295).
123. Officer L and Officer M are both constables – which means that if section 317B had applied, they would have required authorisation from an officer holding a level of position not lower than sergeant before they could set up a road block. Neither Officer L nor Officer M advised NorthComms that they were setting up a road block or sought authorisation to do so (see paragraphs 199-200). Nor did they advise the other units involved in this incident.
124. Officer M has recently advised the Authority that she was not aware at the time that Officer L’s actions constituted a road block which needed authorisation.
125. Officer L began stopping traffic in both directions and soon noticed the motorcycle approaching in the westbound lane. He saw Mr Batt pass traffic, going a little over the speed limit of 50 kph. The officer stood on the traffic island, waving his arms to make sure Mr Batt would see him. The motorcycle then slowed down significantly to between 10 and 20 kph. Officer B aboard Eagle reported on the West channel: *“He’s just coming up behind stationary traffic slowing down.”*
126. Mr Batt slowly passed three cars that were waiting at the road block in the westbound lane. When he reached Officer L on the traffic island, the officer attempted to grab hold of him but Mr Batt accelerated away, veering to the outer edge of the road’s eastbound lane and passing another two cars stopped at the road block. Officer M then advised the other West units: *“He’s coming towards you.”* Mr Batt increased his speed significantly after riding through the road block.
127. This was witnessed by Officer B aboard Eagle and by Officer A, who by this stage was driving behind Mr Batt at a distance of about 800 metres with his warning lights and siren activated. At 9.44:59pm, Officer B described Mr Batt’s actions on the West channel but

did not say that he had gone through a Police road block or that Officer L had tried to stop him.

128. When interviewed by the Authority, Officer B said there had been no discussion of a road block over the radio and he did not initially realise that a road block had been set up in the westbound lane. He saw a lone officer stopping a number of cars, and then saw that officer unsuccessfully trying to stop the motorcycle by physically standing in front of it. After Mr Batt had gone past Officer B considered that it may have been a road block but by that point he thought there were other things of greater priority to report over the radio.
129. At 9.45:10pm, Officer A radioed dispatcher 3 on the West channel and said: *"We just saw what happened there, have we got permission to engage in pursuit again, he's about a k ahead of us already."*
130. The pursuit controller immediately replied: *"Comms Alpha, Comms Alpha to all units. Abandon. Comms Alpha to all units, including Eagle. Abandon."* The two closest units (Officers H and I, and L and M) quickly acknowledged the abandonment order. Officer L turned off his warning lights and Officer A slowed down and turned off his warning lights and siren.
131. Officers C and D did not hear this call to abandon because they were still on the Metro channel and the order was only given on the West channel. The pursuit controller was not aware that these motorway units were attending the incident and were using the Metro channel for their communications.
132. When interviewed by the Authority, the pursuit controller said that after the pursuit had been abandoned on Whangaparaoa Road he was busy dealing with a number of other priorities, including discussing other incidents with a team leader and briefing the NorthComms shift commander who was about to come on duty. He was not informed when Mr Batt was located by Eagle, and so he was not initially aware that Eagle was involved in observing Mr Batt's motorcycle or that patrol units had begun urgent duty driving towards the motorcycle's location.
133. The pursuit controller only realised that Police vehicles were following Mr Batt about seven minutes after Eagle had located him; the team leader's radio was on speaker. In interview with the Authority the pursuit controller said that he: *"heard that the motorbike was travelling towards the direction of the Greenhithe Bridge as there was a patrol providing a commentary. I believed it was a delta unit [Officer A] talking to Eagle."* (at 9.39:40pm; see paragraph 114). He then heard that Eagle was also following the motorcycle. He went to his work station, put some earphones on and plugged into the West channel. He listened to radio traffic from the west units who were positioning

themselves in Hobsonville and saw the FLIR footage from Eagle on a monitor. In his statement he said:

*“I was waiting for some space on the air, to come on and remind our staff that the pursuit of that motorbike had in fact already been ordered to abandon.”*

134. When he heard Officer A request permission to recommence the pursuit at 9.45:10pm (about five minutes after he had first become aware that units were following Mr Batt), the pursuit controller ordered the units to abandon because he believed the situation had not changed and the risks involved in pursuing Mr Batt still outweighed the immediate need to apprehend him. He also ordered Eagle to abandon because he was concerned about the potential for the motorcyclist to see Eagle and continue to travel at dangerous speeds in an attempt to escape.
135. The pursuit controller has recently advised the Authority that he was not aware of the units positioning for up to five minutes before he abandoned pursuit. However, this is contrary to information given by the pursuit controller in both his Police interview, a week after the pursuit, and in his interview with the Authority.

#### *Significant times*

	<b>West channel</b>
Approx 9.44pm	Officer L decides to set up a road block to stop Mr Batt. Neither Officer L nor Officer M seek authorisation or inform dispatcher 3 that they are setting up a road block. Officer L begins stopping traffic in both directions.
9.44:42pm	Officer B aboard Eagle reports that Mr Batt is <i>“coming up behind stationary traffic slowing down”</i> – but does not say that there is a Police road block in place. Officer L attempts to grab Mr Batt but he rides through the road block and accelerates.
9.44:55pm	Officer M advises the other West units: <i>“He’s coming towards you.”</i>
9.44:59pm	Officer B reports that Mr Batt is riding on the wrong side of the road, overtaking and accelerating westbound on Hobsonville Road.
9.45:10pm	Officer A asks for permission to re-engage the pursuit.
9.45:18pm	Pursuit controller orders all units, including Eagle, to abandon.

#### **Pursuit on Hobsonville Road and Don Buck Road**

During this phase of the incident, Officer D began following Mr Batt on Hobsonville Road and commenced a pursuit. After one minute and eight seconds, Mr Batt’s motorcycle collided with a traffic island on Don Buck Road and he suffered serious injuries.

136. About 10 minutes after he had first advised dispatcher 2 he would attend the incident Officer D (the Police motorcyclist) had reached the southern end of Hobsonville Road, near the intersection with State Highway 16. He positioned himself in the median strip of the road, opposite the fire station where Officers F and G were parked, and waited there for Mr Batt with his warning lights and siren turned off. He later said that he thought Officers F and G were also in a category B vehicle; in fact their vehicle was category A (see paragraph 303).
137. At 9.43:38pm Officer D advised dispatcher 2 on the Metro channel that he was stationary near the Westgate shopping centre, and at 9.44:32pm he asked *"Is he still coming Eagle?"* but received no response. The dispatcher was on the phone with Officer N at this time (see paragraphs 108-109). Officer D later said that while he was waiting for Mr Batt, he checked the fuel level on his motorcycle, adjusted the motorcycle screen, and checked the jack plug on his helmet.
138. Neither Officer C nor Officer D had changed their radios from the Metro channel to the West channel, so they did not hear the pursuit controller's call to all units to abandon at 9.45:18pm.
139. Immediately after hearing the order to abandon on the West channel, Officers H and I, and then Officers F and G, saw Mr Batt's motorcycle ride past their positions at high speed. They then saw Officer D activate his motorcycle's red and blue warning lights and turn to follow Mr Batt along Hobsonville Road.
140. Officer D activated his siren shortly after he began following Mr Batt, signalling him to pull over and stop. As discussed earlier, Officer D believed that he had been specifically asked to stop the motorcycle because, in his experience, Police motorcycles are more successful at stopping fleeing motorcyclists than other Police vehicles (see paragraph 82).
141. Mr Batt and Officer D travelled through orange traffic lights as they rode through the intersection of Hobsonville Road and State Highway 16. Realising that Officer D was a motorway unit and may not have heard the call to abandon, Officer F radioed dispatcher 3 on the West channel at 9.45:43pm to ask that she *"transfer that info to Motorways [i.e. the Metro channel] please."*
142. Officer D did not seek permission from the NorthComms pursuit controller (via dispatcher 2) to recommence the pursuit of Mr Batt because he did not know that the pursuit had earlier been abandoned. Nor did he immediately advise NorthComms that he was now following Mr Batt. The Metro channel was quite busy at the time, with person checks being carried out by dispatcher 2 from about 9.45pm. When interviewed by the Authority, Officer D said that he tried on several occasions to get onto the radio and advise NorthComms but was unable to do so until 9.46:15pm (see paragraph 151 below).

143. Dispatcher 2 has recently advised the Authority that the reason he commenced carrying out person and vehicle checks was because he thought that Officers C and D had changed channels. He said: *"it was not my intention for a motorcycle unit to engage in a pursuit with another motorcycle."*
144. Although Eagle's FLIR camera was still focused on Mr Batt, Officer B aboard Eagle did not report that Officer D was following him. Officer B later said that he had seen a motorcycle do a u-turn and follow Mr Batt at speed, but did not realise at the time that it was a Police motorcyclist. He explained that he was watching the FLIR screen (which is in black and white) and could not see the red and blue lights indicating that it was a Police motorcycle. He also said that he did not realise what was happening because he had not heard anyone on the radio report that they had commenced a pursuit.
145. At the same time as Officer D was following Mr Batt, Officer B was asking dispatcher 3 on the West channel to confirm that the pursuit controller wanted Eagle to leave the area. The pursuit controller responded: *"...that's an affirmative. Suggest that we back off, back off completely."* Officer B sought further clarification, arguing that Eagle was only observing the motorcyclist and that he was not aware of Eagle's presence, before agreeing to back off.
146. Meanwhile the FLIR footage from Eagle shows that it took some time for Officer D to catch up to Mr Batt on Hobsonville Road. The two motorcycles overtook five other eastbound vehicles before reaching a roundabout at the end of Hobsonville Road (the Don Buck Road roundabout), about 800-900 metres from where Officer D first began following Mr Batt. Officer D estimated that Mr Batt reached a speed of about 80-85 kph during this time. When interviewed he said he was aware of the need to avoid pressuring fleeing drivers into making foolish decisions and so he gave Mr Batt reasonable space and time to make a decision about whether to stop.
147. At 9.45:54pm on the Metro channel, a motorway unit asked for an update on Mr Batt's location. Another unit replied that he had gone through Westgate and was heading toward the Don Buck Road roundabout.
148. Officer D later said that he almost got alongside Mr Batt when he slowed down for the Don Buck Road roundabout and they looked at each other. The officer shook his head and showed Mr Batt his motorcycle *"as if to say, look you're not going to get away."* However after completing the left hand turn into Don Buck Road, Mr Batt accelerated heavily and Officer D formed the opinion that he was not going to stop. He considered that the risks involved did not outweigh the need to apprehend Mr Batt and so decided to commence a pursuit.
149. Mr Batt continued heading south on Don Buck Road, reaching a speed of about 120 kph in a 50 kph speed zone. He went straight through the roundabout at the intersection with

Westgate Drive and continued along Don Buck Road, followed by Officer D. The two of them began passing three other southbound vehicles as they approached a right hand bend in the road.

150. At 9.46:12pm on the Metro channel, Officer C reported that he was at the Don Buck roundabout and asked what was going on.
151. Officer D then put in a priority call to dispatcher 2 on the Metro channel at 9.46:15pm and reported: “... *the vehicle has turned left, left past Westgate [shopping centre], continuing at speed of 122 kilometres an hour around traffic, standby.*”
152. From listening to the audio recording of Officer D’s message at 9.46:15pm, the Authority determined that Officer D’s siren was not activated at the time. During his interview with the Authority, Officer D explained that he had turned the siren off so that the dispatcher would be able to hear what he was saying (see paragraph 311 for the Authority’s finding on this issue).
153. By this stage Officer D was concerned about the high speed of the pursuit and had decided that he was going to abandon. Mr Batt then decreased his speed and complied with a ‘keep left’ traffic sign, which made Officer D reconsider whether abandonment was necessary. However Mr Batt then sped up again and Officer D briefly lost sight of him as he went over a small rise and around the right hand bend in the road. Officer D determined that he would now have to abandon the pursuit because the speed was too fast and he began slowing down.
154. The FLIR footage from Eagle shows that the gap between the two motorcycles slowly increased to about 250 metres as they travelled through the right hand bend on Don Buck Road and past the intersection with Royal Road.
155. In the meantime, after hearing Officer D’s message about the motorcycle turning left past Westgate, dispatcher 2 did not initially realise that Officer D was in pursuit of Mr Batt. At 9.46:30pm he told Officer D that Eagle had observation of Mr Batt, and then at 9.46.37pm he asked Officer D to switch over to the West channel which was running the incident. Officer D later said that he thought dispatcher 2 knew where he was and what he was doing because (as discussed above) he believed he had been specifically asked to stop the motorcycle.
156. At the same time, Officer D was looking for a street sign so he could advise NorthComms where he was going to abandon the pursuit. He then saw sparks from Mr Batt’s motorcycle crashing in the road ahead of him.
157. Mr Batt collided with a traffic island leading up to a roundabout at the intersection of Don Buck Road and Triangle Road. This caused him to lose control of the motorcycle, which

continued sliding forward for about 100 metres. Mr Batt was thrown from the motorcycle onto the road, and the impact caused him to sustain serious injuries.

158. The motorcycle rolled along the road surface until it struck a northbound vehicle which was approaching the intersection. No one in that vehicle was harmed.
159. At 9.46.42pm, Officer D reported the crash to dispatcher 2 on the Metro channel. He requested an ambulance and stated that Mr Batt had hit the traffic island at about 130 kph. He then provided first aid to Mr Batt. Officers A and C quickly arrived on the scene, followed by the other nearby units.
160. Eagle also reported the crash on the West channel. The crash occurred about five seconds after Officer B's discussion with the pursuit controller about Eagle's involvement had ended (see paragraphs 134 and 145).

#### *Significant times*

	<b>Metro channel</b>	<b>West channel</b>
9.43:38pm	Officer D arrives in Hobsonville Road and advises dispatcher 2 on the Metro channel that he is at Westgate.	
9.44:32pm	Officer D asks <i>"Is he still coming Eagle?"</i> but receives no response.	
9.44:55pm	Dispatcher 2 begins conducting person checks.	Mr Batt rides through the road block and Officer M advises the other West units: <i>"He's coming towards you."</i>
9.45:18pm		Pursuit controller orders all units, including Eagle, to abandon.
Approx 9.45:30pm	Mr Batt rides past Officer D. Officer D activates his motorcycle's lights and siren and begins to follow Mr Batt. He is unable to get on the radio because the channel is busy.	West units acknowledge the order to abandon. Mr Batt speeds past their positions and they see Officer D begin to pursue Mr Batt.
9.45:43pm		Officer F asks dispatcher 3 to <i>"transfer that info to Motorways please"</i> .
9.45:51pm	A motorway unit asks for an update on Mr Batt's location and another unit replies that he is heading towards the Don Buck Road roundabout. Officer C says he is at the Don Buck Road roundabout and asks what is going on.	Officer B aboard Eagle asks dispatcher 3 for confirmation that the pursuit controller is asking Eagle to abandon, saying: <i>"We are in observation only, not in pursuit."</i>
9.46:15pm	Officer D puts a priority call through to dispatcher 2 and says that Mr Batt has turned left at Westgate and is travelling at 122 kph.	The pursuit controller confirms that he is asking Eagle to abandon. Officer B argues that they are in observation only.

		Pursuit controller repeats that he is suggesting they back off completely.
9.46:37pm	Dispatcher 2 asks Officer D to change over to the West channel.	
9.46:42pm	Officer D reports that Mr Batt has crashed and asks for an ambulance to attend.	
9.47:05pm		Officer B reports the crash.

#### CRASH ANALYSIS

---

161. Don Buck Road is a dual carriage way, with the northbound and southbound lanes separated by a white centre line. On the night of the crash, the weather was fine and the road was dry and well lit. The level of traffic was light.
162. The crash investigator was unable to calculate the motorcycle's speed when it crashed due to the number of variables involved, such as: loss of speed from hitting the traffic islands, whether Mr Batt braked, the impact of the motorcycle sliding up the road and the motorcycle's collision with the car.

#### DION BATT

---

163. Mr Batt was 34 years old at the time of the crash. He was riding a black 1995 1338cc Harley Davidson motorcycle. His helmet did not comply with New Zealand safety standards.
164. He sustained a severe brain injury in the crash which will require long-term treatment.
165. Blood taken from Mr Batt approximately two hours and 15 minutes after the crash was found to contain methamphetamine, a Class A controlled drug. No alcohol was detected in the blood sample.
166. Police found methamphetamine and a large amount of money on Mr Batt after the crash. Due to his severe brain injury, he has not been charged with any offences in respect of his actions on 27 March 2010.



# Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

## LEGISLATIVE AUTHORITY FOR PURSUITS

---

167. 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

---

### Background

168. On 18 October 2010, 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 on 27 March 2010.

### Definition

169. 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

170. 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.”*
171. The driver of a Police vehicle has the primary responsibility for the initiation, continuation and conduct of a pursuit. Further, before commencing a pursuit an officer is required to

first undertake a risk assessment. The driver must then determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.

172. 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**

173. When a pursuit commences, the communications centre must be notified. The pursuit policy states that officers must use a 'pre-alert technique', saying: "*Comms Centre, [Call sign], in pursuit.*"
174. The communications centre must provide the warning referred to in paragraph 35, which the pursuing officers must acknowledge. The pursuing officers must provide information about the pursued vehicle, its location and direction of travel, and the reason for pursuit. The communications centre must also 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.

### **Radio channel**

175. Police protocol is that all radio communications for fleeing driver situations should be transmitted on the channel where the pursuit was commenced. However if the pursuit moves into an area where the radio coverage for that channel deteriorates, communications may be switched over to another channel with better reception for that area. When this happens, best practice dictates that all units involved in the pursuit should be given a clear direction to switch channels and identify themselves to the new dispatcher, so that everyone involved is using the same channel and the new dispatcher is aware of all the units at his or her disposal and their capabilities (i.e. single crewed, motorcycle, marked vehicle etc). However this is not stated in policy. See the Authority's recommendation on this point at paragraph 332(4).

### **Roles and responsibilities**

176. The driver of a Police vehicle 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.
177. The driver of a pursuing vehicle (or the passenger if there is one) is also responsible for providing a radio commentary on the pursuit, and for informing the communications

centre and other Police staff of the fleeing vehicle's location, speed and direction, and other 'risk factors' such as road and traffic conditions.

178. Other Police staff in the vicinity are not to participate in the pursuit, unless they are responding to a direction or have received permission from the pursuit controller.
179. Communications centre dispatchers are responsible for maintaining radio contact with Police vehicles in their assigned areas. In the case of pursuits, the dispatcher's responsibilities include giving the safety reminder required under Police pursuit policy (see paragraph 35), communicating instructions from the pursuit controller, and prompting for information such as the speed and direction of the fleeing vehicle.
180. The pursuit controller is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics. One of the duties of the pursuit controller is to: *"Limit the number of Police vehicles following, to not more than two unless tactically appropriate."*

#### **Driver and vehicle classification**

181. Under the policy, pursuits may only be carried out by drivers who have qualified under the Professional Police Driver Programme. The policy also places restrictions on which Police vehicles can take part in pursuits.
182. When considering whether to commence a pursuit, the capabilities of the officer and the vehicle must form part of the risk assessment, including: the experience of the Police driver, the type of Police vehicle, and whether it is a single crewed vehicle. According to the *Police Vehicle Management* policy, the pursuit controller must replace a category B vehicle involved in a pursuit with a category A vehicle as soon as possible.

#### **Abandonment**

183. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The pursuit policy also states that the pursuit controller must: *"Direct that the pursuit be abandoned if the identity of the offender(s) becomes known during the pursuit and apprehension can safely be effected later."*
184. 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.
185. The policy sets out the steps that must be carried out 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 speed limit</i>
4	<i>Stop as soon as it is safe to do so</i>
5	<i>Report abandonment to the pursuit controller, confirming that they are stationary and giving their position.</i>

186. In the 'Police driver action' section of the pursuit policy, it says: *"Staff must regard a sustained loss of contact with Comms as strongly weighing against continuation of the pursuit."*

187. In relation to recommencing a pursuit, the policy states: *"An abandoned pursuit is not to be recommenced without the approval of the Pursuit Controller."*

### **Search phase**

188. 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 Comms National Management Group agreed that the policy would apply across all three communications centres.

189. 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."*

190. 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.
191. The policy relating to search phase is silent on the role of Eagle, and does not specify what should happen if Eagle locates the vehicle that is attempting to evade Police but there are no units close enough to attempt to stop the fleeing vehicle (as happened in this case).

### Use of Eagle

192. The pursuit policy requires aerial surveillance (i.e. Eagle) to be used when it is available. Once surveillance has been established, Eagle must take primary responsibility for providing commentary to the communications centre (in order to reduce pressure on the other officers involved in the pursuit), and the pursuit controller must consider whether the other Police units involved should remain in pursuit. In respect of abandonment, the policy states:

*“While the presence of aerial surveillance can encourage offenders to stop their attempt to evade Police, there are also situations in which offenders drive in a dangerous manner to evade aerial surveillance (similar to ground pursuit).*

*Officers undertaking aerial surveillance and the pursuit controller must therefore, carry out a risk assessment for continued aerial surveillance, and abandon pursuit if appropriate. Any aircraft that abandons pursuit must leave the vicinity of the pursuit as rapidly, but as safely, as possible [emphasis in original].”*

193. At the time of this incident, there was no written Police policy relating to the use of Eagle other than what was included in the pursuit policy in respect of aerial surveillance (as described above). On 30 May 2012 Police instituted a formal policy titled *Police air operations*, which states:

*“During the course of normal operations ... the Air Support Unit [Eagle] must operate and take directions from the Northern Communications Centre and must provide commentary and updates to the Centre in the same manner as any other field unit.”*

URGENT DUTY DRIVING POLICY

---

194. The overriding principle of the urgent duty driving policy is: *“No duty is so urgent that it requires the public or police to be placed at unjustified risk.”*
195. 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].”*
196. 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.
197. When deciding whether it is appropriate to commence or continue urgent duty driving, an officer must consider the following factors:
- *“time of the incident – is it in progress?”*
  - *nature and seriousness of the incident*
  - *proximity of other units to the incident*
  - *environment e.g. weather, traffic volume, road type, speed limit and pedestrians etc*
  - *driver classification and vehicle classification*
  - *whether warning devices are activated or a “silent approach” is being used [emphasis in original].”*
198. 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...”*.

## ROAD BLOCKS

199. The pursuit policy in force at the time of this incident did not include setting up a road block as a tactical option. Nor is it included in the *Fleeing Driver* policy which was introduced in October 2010.

200. Section 317B of the Crimes Act 1961 provides:<sup>5</sup>

*“(1) Where any senior constable (holding a level of position not lower than sergeant) has reasonable grounds to suspect that there is in or on any vehicle any person who –*

*(a) has committed an offence punishable by a term of imprisonment of 7 years or more; or*

*(b) is unlawfully at large, –*

*that senior constable may authorise the establishment of a road block for the purpose of arresting that person if he or she –*

*(c) has reasonable grounds to suspect that the vehicle may travel past the place where it is proposed that the road block be established; and*

*(d) is satisfied that as far as is reasonably practicable the safety of all road users will be ensured in the area in which the road block is established. ...*

*(8) “For the purposes of this section, **road block** means any form of barrier or obstruction preventing or limiting the passage of vehicles.”*

201. Section 35 of the Policing Act 2008 provides that a constable may temporarily close to traffic any road, or part of a road, leading to or from or in the vicinity of a place, if the constable has reasonable cause to believe that:

- Public disorder exists or is imminent at or near that place; or
- Danger to a member of the public exists or may reasonably be expected at or near that place; or
- An indictable offence not triable summarily under section 6 of the Summary proceedings Act 1957 has been committed or discovered at or near that place.

<sup>5</sup> The Authority notes that section 30 of the new Search and Surveillance Act 2012 still requires authorisation from a “*senior constable*” (i.e. a constable who holds a level of position of sergeant or higher, including any constable who is acting in any such rank) for the establishment of a warrantless road block.





# The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

## THE AUTHORITY'S ROLE

---

202. 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.

203. The Authority's role on the completion of an investigation is to determine whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable.

## THE AUTHORITY'S INVESTIGATION

---

204. As required under section 13 of the Act, Police notified the Authority of the serious injury of Mr Batt on 30 March 2010.

205. The Authority assigned an investigator, who travelled to the scene and viewed the environment where the pursuit took place.

206. 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, and the crash investigation report. The Authority's investigator also independently interviewed the NorthComms staff and some of the officers involved in responding to this incident.

ISSUES CONSIDERED

---

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

- 1) whether Police complied with the law and pursuit policy at each stage of the first pursuit, specifically in relation to the:
  - a) commencement and recommencement of the pursuit;
  - b) communication;
  - c) speed and manner of driving; and
  - d) ongoing risk assessment/abandonment;
- 2) whether Police complied with the search phase and urgent duty driving policy;
- 3) whether the command and control of this incident was satisfactory;
- 4) the motorway units' communication problems;
- 5) whether Police complied with the law and pursuit policy in respect of road blocks;
- 6) whether Police complied with the law and pursuit policy at each stage of the second pursuit, specifically in relation to the:
  - a) commencement and recommencement of the pursuit;
  - b) communication;
  - c) speed and manner of driving; and
  - d) ongoing risk assessment/abandonment.



# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

## ISSUE 1: THE FIRST PURSUIT – WHANGAPARAOA ROAD

---

### Commencement of pursuit

- 208. Officer A decided to pull Mr Batt over for dangerous driving after seeing him overtake two vehicles at a speed he estimated to be over 100 kph (in a 50 kph zone).
- 209. The officer had a gold licence and was driving a category A marked Police dog wagon. He was qualified to undertake pursuits under the Professional Police Driver Programme.
- 210. Officer A was empowered to stop Mr Batt for traffic enforcement purposes under the Land Transport Act 1998 and was justified in initiating the pursuit after Mr Batt failed to stop when signalled to do so.
- 211. Officer A carried out a risk assessment, as required by policy, prior to the pursuit and considered that the risk involved in pursuing Mr Batt was justified.

#### FINDING

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

### Communication

- 212. Immediately after Officer A had commenced the pursuit, he contacted dispatcher 1 on the North Shore channel and advised that a motorcycle had “legged it” on him after he turned to stop it. Dispatcher 1 then asked him to confirm he was in pursuit and delivered the warning required by pursuit policy (see paragraphs 31-36).
- 213. Officer A acknowledged the warning and gave the dispatcher his driver certification and vehicle classification. He also explained the reason for the pursuit. The officer then regularly provided dispatcher 1 with information about the risks, including the location of the pursuit, his speed, the level of traffic, Mr Batt’s manner of riding and the type of road involved.

214. In his statement Officer A said that Mr Batt had reached speeds of 110 kph in a 50 kph zone and then 120 kph in a 60 kph zone near Vipond Road (see paragraphs 34 and 39). Ideally he would have reported these speeds to NorthComms because the speed of the fleeing driver is an important risk factor. In all other respects, however, the communication between Officer A and dispatcher 1 was handled well – especially considering that Officer A was the sole occupant of his vehicle and was required to operate the radio in addition to concentrating on his driving.
215. Dispatcher 1 soon identified the registered owner of the motorcycle and radioed this information to Officer A. The pursuit controller then gave the order to abandon the pursuit.

**FINDING**

Officer A generally complied with the pursuit policy in respect of communication, other than not reporting his estimations of Mr Batt's top speeds.

**Speed and manner of driving of Police**

216. 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 activated his red and blue warning lights upon completing a u-turn in order to pursue Mr Batt. He then activated his siren as he followed the motorcycle.
217. The officer regularly advised dispatcher 1 about the speeds he reached during the pursuit. As discussed above, Officer A reported that his own maximum speed was 100 kph in a 60 kph zone. This speed was acceptable in the circumstances (wide road, low to medium level of traffic; see paragraph 220 below).

**FINDING**

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

**Ongoing risk assessment/abandonment**

218. 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.
219. Officer A said in his statement that Mr Batt had reached speeds of up to 110 in a 50 kph zone and 120 in a 60 kph zone. The Authority is of the view that sustained speeds by the fleeing vehicle of 110 kph in a 50 kph zone, and 120kph in a 60kph speed zone, would not have been acceptable had they continued for any length of time – especially considering that the vehicle being pursued was a motorcycle which increases the risks involved.

220. However the Authority finds that, whilst at the higher end of the scale, these speeds were acceptable in the circumstances because:
- they were only reached for a short amount of time;
  - the road was wide and well lit;
  - the level of traffic was quite low at the time (although it increased near Vipond Road); and
  - the pursuit was abandoned shortly after Officer A estimated that Mr Batt had reached 120 kph in a 60 kph zone.
221. About three minutes into the pursuit, the pursuit controller ordered it to be abandoned for a number of reasons – including that (i) Police now knew the identity of the motorcycle’s owner and (ii) he considered that the risks involved in the pursuit outweighed the immediate need to apprehend Mr Batt (see paragraphs 42 and 183). In the Authority’s view this was the correct decision.
222. Officer A complied with pursuit policy by immediately acknowledging the order to abandon and decreasing his speed. He then deactivated his warning lights and siren, pulled over to the side of the road and stopped his vehicle.

#### FINDINGS

The pursuit controller properly considered all relevant risk factors. His decision to call for the abandonment of the pursuit was justified and appropriate in the circumstances.

Officer A complied with policy in respect of abandonment.

#### ISSUE 2: SEARCH PHASE AND URGENT DUTY DRIVING

223. After the pursuit had been abandoned on Whangaparaoa Road at 9.27:25pm, a search phase began (see paragraphs 188-190 for policy). Police patrols in the area started looking for Mr Batt and his motorcycle, thought to be headed towards State Highway 1.
224. Police policy states that, during a search phase, officers are not justified in urgent duty driving (i.e. driving at speed and with their warning lights and sirens activated) in order to locate the fleeing vehicle.
225. If a Police unit locates the fleeing vehicle during the search phase, they may signal the vehicle to stop – but if the vehicle again fails to stop, the unit may only recommence the pursuit once they have received permission from the pursuit controller (see paragraph 189).

226. The current search phase policy is silent on what should happen if it is Eagle that locates the fleeing vehicle. However Eagle is obviously not able to signal the vehicle to stop – so it is necessary for a Police unit on the ground to get close enough to the fleeing vehicle in order to do that.
227. In this case, after Mr Batt had been located by Eagle at 9.32:30pm, patrol units began urgent duty driving towards his location. Their intention was to apprehend Mr Batt by getting close enough to signal him to stop and potentially recommencing the pursuit if he failed to do so.
228. Urgent duty driving is permitted for the purpose of “*apprehending an offender for a traffic or criminal offence*” (see paragraphs 194-198 for policy). Police were seeking to apprehend Mr Batt because Officer A had witnessed him speeding and driving dangerously. Mr Batt had also failed to stop for Police.
229. The Authority finds that the search phase ended once Mr Batt’s motorcycle had been located by Eagle. The officers involved were then justified in urgent duty driving in order to get close enough to Mr Batt to signal him to stop – provided they considered, amongst other things, the nature and seriousness of the incident and the proximity of other units (see paragraph 197).
230. This case has highlighted some gaps in the search phase policy, especially around situations where Eagle is involved in locating the vehicle that has evaded Police. In particular there were issues regarding the failure by NorthComms staff during the search phase to:
- notify the pursuit controller of the situation; and to
  - limit and control the number and type of Police units responding.

These issues are discussed further at paragraphs 233 and 269.

231. Police policy requires that officers must use their warning lights and sirens when engaged in urgent duty driving “*at all times (continuously)*” in order to provide sufficient warning to other motorists (see paragraph 198).
232. Officers C and D have both said that they only used their sirens intermittently while urgent duty driving. They have explained their reasons for doing so to the Authority (see paragraphs 100-101), but technically they have breached the urgent duty driving policy by not constantly using their sirens. This issue is discussed further at paragraphs 279-283.

**FINDINGS**

Officers were justified in undertaking urgent duty driving to apprehend Mr Batt once the search phase had ended, provided they complied with the Police urgent duty driving policy.

Officers C and D breached the urgent duty driving policy by not constantly using their sirens.

**ISSUE 3: COMMAND AND CONTROL**

233. During a fleeing driver situation, the pursuit controller is responsible for supervising the pursuit and coordinating the Police response. Dispatchers are responsible for communicating instructions from the pursuit controller and prompting for information from the pursuing Police units (such as the speed and direction of the fleeing vehicle).

234. Three different Police radio channels were used during this fleeing driver incident:

- from 9.24:44pm to 9.41.41pm, Officer A, other North Shore patrol units and Officer B aboard Eagle used the North Shore channel and communicated with dispatcher 1;
- from 9.30:50pm onwards motorway units, including Officers C and D, used the Metro channel and communicated with dispatcher 2; and
- from 9.36:44pm onwards Officers F-M used the West channel and communicated with dispatcher 3. Officers A and B (and other units that had been following the incident on the North Shore channel, including Officer E) switched over to the West channel at 9.41:42pm.

**Failure to advise the pursuit controller**

235. After the pursuit of Mr Batt was abandoned on Whangaparaoa Road at 9.27:25pm, the pursuit controller began attending to other matters (see paragraph 132). He did not supervise the search phase that followed the abandonment.

236. At 9.32:30pm Officer B aboard Eagle advised dispatcher 1 on the North Shore channel that he had located Mr Batt. He then provided a commentary of Mr Batt's movements while ground patrol units drove towards Mr Batt.

237. Dispatcher 1 had handled the initial pursuit of Mr Batt by Officer A on Whangaparaoa Road, which had been supervised by the pursuit controller. Dispatcher 1 did not,

however, alert the pursuit controller to the fact that Eagle had located Mr Batt heading south on the Northern Motorway.

238. The Authority's view is that dispatcher 1 should have immediately advised the pursuit controller that Eagle had located Mr Batt, regardless of the fact that Police units were not yet close enough to recommence pursuit. In drafting their policy, Police assigned responsibility for co-ordinating the response to a fleeing driver incident and selecting and implementing the appropriate tactics to the pursuit controller – not the dispatcher or the patrol units (see paragraph 180). The pursuit policy also states that: *“Once air surveillance is established, the pursuit controller must consider the appropriate role of other units, including whether they should remain in pursuit”* (see paragraph 192).
239. If the pursuit controller had been immediately alerted to the fact that Mr Batt had been located by Eagle, he could have either:
- ordered all units to stop driving towards Mr Batt, because the risks involved in conducting a pursuit had not reduced (see paragraph 189); or
  - managed the Police response by supervising the dispatchers involved, monitoring the radio channels, deciding which of the available patrol units should be dispatched to attempt to apprehend Mr Batt (logically these would be the category A vehicles that were nearest to Mr Batt's position), and ensuring that they were all communicating on the same radio channel.
240. Ideally dispatcher 3 would also have advised the pursuit controller once control of the incident was passed to the West channel at 9.41:42pm.
241. As it happened, the pursuit controller had already overheard the incident on the West channel at around 9.39:40pm. But he did not intervene until after Officer A asked for permission to recommence the pursuit about five minutes later (see paragraphs 129-134). In the Authority's view it should not have taken so long for him to take active control over the situation.

#### FINDINGS

Dispatcher 1 should have immediately advised the pursuit controller that Eagle had located Mr Batt.

The pursuit controller should have intervened as soon as he became aware that Eagle and patrol units were following Mr Batt.

### **Failure to limit the number of Police units involved**

242. Under the pursuit policy, it is the pursuit controller's responsibility to limit the number of Police vehicles following a fleeing driver during a pursuit to no more than two unless tactically appropriate (see paragraph 180).
243. The Authority finds that there was a failure to limit the number of patrol units attending this fleeing driver incident. Ultimately there were at least eleven Police vehicles (in addition to Eagle) responding to the incident, comprising: at least three units from the North Shore, at least four motorway units, and four West units.
244. While a pursuit was not yet technically underway at the time (the units involved were urgent duty driving), it was not necessary to have eleven Police units driving towards Mr Batt in anticipation of one. In particular, once Mr Batt had left the Northern Motorway and the West units had become involved, it was not necessary for the motorway units (two of which were category B vehicles) to attend this incident from some distance away (see paragraphs 261-269).
245. None of the three dispatchers involved appear to have known exactly how many units were responding – in particular dispatcher 3 on the West channel does not appear to have been aware that the motorway units were driving towards Mr Batt's location.
246. The pursuit controller was not able to limit the number of Police vehicles involved because he was not initially aware that Police were still attempting to apprehend Mr Batt. As discussed above, he did later realise that Eagle and Police patrols were following Mr Batt when he overheard discussion about it on the West channel (at around 9.39:40pm), but he did not know how many units were involved and did not intervene until he ordered all units to abandon at 9.45:18pm.

#### **FINDING**

There was a failure by NorthComms to assess and limit the number of patrol units attending this incident.

### **Failure to ensure all Police units were using the same radio channel**

247. All of the units who were responding to this incident should have been using the same radio channel and should have identified themselves to the dispatcher. This would have ensured that the dispatcher (who ideally would have been supervised by the pursuit controller) was able to effectively manage and direct all the patrol units who were involved.

248. In this case, however, from the time Eagle located Mr Batt onwards there were at least two channels handling communications for the units who were responding to the incident. For a five minute period, from 9.36:44pm – 9.41:42pm, three channels (North Shore, Metro and West) were being used to coordinate the responding units (see paragraph 111).
249. The obvious risk associated with having multiple radio channels running an incident simultaneously is that important information may be lost or missed by the communications staff and the attending patrol units. During this incident, although some information about what was happening on the other channels was passed between the three dispatchers on the computer-assisted dispatch (CAD) system, dispatcher 3 later said that she did not realise that motorway units on the Metro channel were involved in the attempt to apprehend Mr Batt.
250. The pursuit controller also did not know about their involvement. This meant that when he gave the order for all units to abandon on the West channel at 9.45:18pm, he was not aware of the need to give the same order to the motorway units on the Metro channel. The pursuit controller should have been made aware of all the patrol units and radio channels involved in following Mr Batt to enable him to proactive in supervising and coordinating the overall response to the incident (see paragraph 180). For example, the dispatchers should have been advising the pursuit controller about all the significant developments in their response and should have consulted him about the decision to switch control of the incident from the North Shore channel to the West channel at 9.41.42pm.
251. At 9.33:57pm, just after Officers C and D had advised dispatcher 2 on the Metro channel that they would travel towards Mr Batt's location, Officer E asked dispatcher 2 which channel the incident was being run off and he replied: *"North Shore at present."* At this point dispatcher 2 should have directed the motorway units to change over to the North Shore channel and should have stopped responding to their requests for updates about Mr Batt's location on the Metro channel.
252. Failing that, dispatcher 2 should also have clearly directed the motorway units to switch to the West channel at 9.42:20pm, when he advised them: *"Motorbike has just passed Hobsonville air field. The job is now being run off Auckland West."* Officer D asked him to repeat the message but he only repeated the part about the motorbike having passed the Hobsonville air field (see paragraph 102).
253. Because dispatcher 2 did not give the motorway units a clear direction to switch channels and Officer D did not hear that the job was being run off the West channel, Officer D was under the impression that the Metro channel was controlling the incident. Dispatcher 2 did not explicitly direct the motorway units to change over to the West channel until 9.46:37pm, by which time Officer D was already pursuing Mr Batt.

254. The Authority finds that whenever the decision is made to switch the radio channel controlling a fleeing driver incident to a new channel, the dispatcher should issue a clear direction to all units involved to change channels and to identify themselves to the dispatcher on the new channel. This would help to ensure that all units are on the same radio channel and would enable the new dispatcher to be aware of all the units at his or her disposal and manage them under the supervision of the pursuit controller.

#### FINDINGS

The Authority has concerns about incidents such as this being run simultaneously off multiple channels due to the clear risk that important information will be lost.

The pursuit controller should have been involved in making the decision to switch radio channels.

Dispatcher 2 should have clearly directed the motorway units to switch to the radio channel that was running the incident.

#### Confusion about the incident

255. During this incident Officers C and D and at least two of the West units (Officers J and K, and L and M) were under the impression that they were attending an active pursuit, even though:
- dispatcher 2 on the Metro channel twice stated, at 9.30:50pm and 9.33.32pm, that the motorcycle had been involved in a pursuit that was abandoned (see paragraphs 50 and 75); and
  - Officer B aboard Eagle said on the West channel at 9.41:42pm that they were following a motorcycle from an abandoned pursuit (see paragraph 115).
256. Dispatcher 2 did mistakenly describe the event as a pursuit at 9.34:18pm when he told the motorway units (including Officers C and D) to: *“be advised this pursuit, sorry this motorbike is coming through”* (see paragraphs 93-94). Although he did correct himself, he did not repeat that the pursuit of the motorcycle had been abandoned. This may have compounded the misunderstanding Officers C and D had about what type of incident they were attending.
257. In relation to the communications issues identified by the Authority, dispatcher 2 has said that the lack of clarity in his radio transmissions was contributed to by the West and North Shore dispatchers yelling things aloud while still trying to dispatch. This led to the domino effect of delayed information and a hectic environment on the dispatch floor. He also said that there was a lack of direction from the pursuit controller.

258. The incident first came onto the West channel at 9.36:44pm but it was not mentioned that the pursuit of the motorcycle had earlier been abandoned until five minutes later, when control of the incident passed from the North Shore channel to the West channel (at 9.41:42pm). Consequently some of the West units who had responded to Officer A's early request for units thought they were attending an active pursuit.
259. It was important for the officers to understand what type of incident it was because they were required to request permission from the pursuit controller before recommencing a pursuit of a vehicle which has previously been abandoned – whereas policy does not require officers to request permission before joining an active pursuit or becoming the lead pursuit vehicle.
260. This incident demonstrates the importance of clear communication between the pursuit controller, the dispatcher(s) and the attending patrol units on the status of an event, particularly when multiple channels are involved and some units are joining in partway through.

**FINDING**

There was a lack of clear communication on the Metro and West channels about the status of this fleeing driver event.

**Use of category B vehicles**

261. Shortly after dispatcher 2 had said the job was being run off the West channel (at 9.42:20pm), a motorways sergeant, Officer N, phoned dispatcher 2 expressing concern about Officer D's involvement in the incident, saying that because Officer D was on a motorcycle he "*probably shouldn't engage in any pursuit at all*" (see paragraphs 108-109). Dispatcher 2 explained that Mr Batt was just being followed at a distance and was "*not actually being pursued ... as such*".
262. Officer D was riding a Police motorcycle, which is a category B vehicle. Officer C was also using a category B vehicle (an unmarked patrol car). The *Police Vehicle Management* policy states that a pursuit controller must replace a category B vehicle that is involved in a pursuit with a category A vehicle as soon as possible (see paragraph 182).
263. Dispatcher 2 should have considered the category of the vehicles used by Officers C and D and the distance between them and the fleeing vehicle before deploying them to attend this incident. Furthermore, when Officer N questioned Officer D's involvement in the incident, dispatcher 2 should have reconsidered whether it was appropriate for Officer D to attend and consulted the pursuit controller.

264. In the Authority's view there was little value in dispatching category B vehicles to attend this fleeing driver situation, which was highly likely to develop into a pursuit given that Mr Batt had earlier failed to stop for Police and had been involved in a pursuit on Whangaparaoa Road that had to be abandoned. Once a pursuit had been commenced the pursuit controller would have had to replace these vehicles with category A vehicles.
265. In this case there were plenty of other (category A) Police units who were closer to Mr Batt and available to attend the incident – especially once Mr Batt had turned off the Northern Motorway and headed west. The Authority finds that, at this point, dispatcher 2 should have proactively managed the number of attending units and should have stood down the category B motorway units.
266. When interviewed, Officer C said that he believed he could help out with a pursuit in a 'supporting role' despite being in a category B unmarked vehicle (see paragraph 79). Officer D also said that Police motorcycles are useful in a fleeing driver situation because, in his experience, fleeing drivers are more likely to stop for them than for Police cars (see paragraph 82).
267. The Authority notes, however, that there is no provision for the use of category B vehicles in a supporting role in the pursuit policy. Nor are Police motorcycles identified as being especially effective at stopping fleeing vehicles in that policy.
268. In any event, if the officers or dispatcher 2 intended to use category B vehicles as a tactical option during this incident, they should have consulted and obtained authorisation from the pursuit controller. The pursuit controller is responsible for assessing the risks involved and selecting and implementing tactics for stopping a fleeing driver, including managing the number and type of units involved.
269. In this case there was no discussion between dispatcher 2 and Officers C and D about what the intended tactics were for apprehending Mr Batt, and no consultation with the pursuit controller. If category B vehicles were to be used, it should have been as part of a planned tactical approach which was subject to a thorough risk assessment.

#### FINDINGS

Dispatcher 2 should have questioned the appropriateness of deploying two category B vehicles to attend this fleeing driver incident.

If category B vehicles were to be involved in a supporting role or, in the case of the Police motorcycle, requesting the fleeing driver to stop, authorisation for these tactics should have been sought from the pursuit controller.

ISSUE 4: MOTORWAY UNITS' COMMUNICATION ISSUES

---

**Changing radio channels**

270. As discussed above at paragraphs 90-91 and 247-254, all of the units who were responding to this fleeing driver incident should have been using the same radio channel (initially the North Shore channel then the West channel) so that the incident could be controlled by a single dispatcher and the pursuit controller. However some of the motorway units, including Officers C and D, stayed on the Metro channel throughout.
271. At 9.33:57pm, just after Officer D had told dispatcher 2 on the Metro channel that he would begin heading towards Mr Batt's location, dispatcher 2 stated that the incident was being run off the North Shore channel. Officer D could not remember hearing this message but said he would have changed over to the North Shore channel if he had been asked to do so (see paragraph 92).
272. At 9.42:20pm Officers C and D were advised that the motorcycle was in Hobsonville and the event was now being run from the West channel (see paragraph 102). Officer D later said that he did not hear this information, which is supported by the fact that he immediately asked dispatcher 2 to repeat the message. However dispatcher 2 only repeated the part of the message relating to the motorcycle's location and it was not until four minutes later (after Officer D had started pursuing Mr Batt) that the dispatcher directly asked Officer D to switch to the West channel.
273. When interviewed by the Authority, Officer C said that he remembered hearing the message and he told dispatcher 2 at the time that he would not change channels, because it was unsafe for him to do so while urgent duty driving (there is no record of this in the Metro radio transmissions; see paragraphs 104-105). In his Police interview he explained that:
- "...with ... the radio set up, you have to keep flicking from one channel to the next [to find the right one]. When you've got a pursuit going on it's really, for me, unacceptable because you are trying to drive, keep Comms going, keep obs going, sometimes driving at a speed above 100 kph, and you're having to look down to try and change to flick to a west channel..."*
274. Officer C has told the Authority that he routinely refuses to switch radio channels while urgent duty driving because it distracts him from concentrating on his driving and is unsafe. His view is that it is better for the dispatchers at NorthComms to keep him updated separately on the Metro channel because they "... can talk to each other and they can pass information to me, better than me trying to fiddle over trying to find [the correct radio channel]". The Authority's view, however, is that it is not feasible to expect

a dispatcher to keep an officer updated on an incident they are not controlling, for the following reasons:

- it ties up two dispatchers on one incident;
- incidents such as this are generally fast-paced and information is time-sensitive, so requiring one dispatcher to communicate information to a second dispatcher not only takes up valuable time but also creates a delay;
- having Officer C on a different channel means that all the rest of the units involved in attending the incident cannot hear his transmissions and any relevant information he may be able to provide.

275. Officer C has suggested that the Metro and West radio channels should have been linked together, so that all units involved in the incident could communicate with each other and hear what was going on. However linking the channels together would have meant that two busy radio channels were taken over by this single fleeing driver incident; a more efficient strategy is to have all the units involved switch over to the channel that is running the incident.<sup>6</sup>

276. Officer D also explained in his interviews that he did not feel safe switching radio channels while riding his motorcycle (see paragraph 106). There was an opportunity for Officer D to safely change channels once he was parked in Hobsonville Road waiting for Mr Batt (see paragraph 136), but he had not heard dispatcher 2's message about the incident being run on the West channel. He later said that if he had heard the message, he would have stopped and changed channels (see paragraph 104).

277. The Authority finds that if Officer C felt unsafe changing the radio channel while driving, he should have found a safe place to pull over and stop his vehicle in order to do so safely, rather than choosing to continue communicating separately on a different channel. As discussed above, having two (or more) different dispatchers supervising multiple patrol units who are attending the same fleeing driver incident runs the risk of vital information not being passed on – such as in this case where the motorway units on the Metro channel were not told about the pursuit controller's order for all units to abandon. There was no urgent need for Officer C to catch up to Mr Batt that would have justified him not stopping to change channels.

---

<sup>6</sup> Since this incident occurred, a new digital Police radio system has been instituted and it is no longer possible to link radio channels – but it is possible to create a separate channel dedicated to controlling a particular incident if necessary. This requires extra staff to run the channel.

278. The overriding principle in the urgent duty driving policy states: *“No duty is so urgent that it requires the public or police to be placed at unjustified risk.”* The Authority is of the view that it is of vital importance that officers are able to communicate effectively with the Police communications centre while attending a fleeing driver situation. If they are unable to do so safely, then they should abandon their involvement in the incident.

**FINDING**

Officer C should have stopped and changed over to the West channel.

**Difficulty hearing the radio**

279. Officer D has commented that when he is riding at speed, with his motorcycle’s siren activated, he cannot hear his radio properly due to wind noise and the high volume of the siren. He explained to the Authority that he often finds it necessary to slow down and turn off his siren when using the radio (see paragraph 100).
280. During this incident both Officer D and Officer C mentioned to ATOM that Officer D would have difficulty communicating because he was on a motorcycle (see paragraph 96), and on a couple of occasions Officer D had to ask dispatcher 2 for information to be repeated because he had not heard it (see paragraphs 99 and 102).
281. For safety reasons, Police policy requires officers to use both warning lights and sirens when urgent duty driving or engaging in a pursuit (see paragraph 198). Although Officer D advised the Authority that his warning lights remained activated, and that he slowed down whenever he had to turn off his siren, technically he has breached the policy by not having his siren activated at all times.
282. The pursuit policy (now called the fleeing driver policy) is largely based on effective communication between the pursuing officers and the pursuit controller at NorthComms. The policy states that officers should regard loss of contact with the communications centre as *“strongly weighing against continuation of the pursuit”* (see paragraph 186).
283. If officers experience communication difficulties, such as being unable to hear the radio when the sirens are activated, the Authority’s view is that they should abandon their involvement in the fleeing driver incident – even if the pursuit has not yet formally commenced – because the risks are too great. If an officer is unable to communicate or hear the radio properly, their ability to provide information to the dispatcher will be impaired and they may miss vital instructions from the pursuit controller, such as an order to abandon.

**FINDING**

Officer D should have abandoned his involvement in this fleeing driver incident because he was unable to hear the radio properly when his siren was activated.

**Decision to attend**

284. Officer C and D's radio problems stemmed in part from the fact that they were the sole occupants of their vehicles and were therefore responsible for operating the radio and communicating with NorthComms in addition to driving. In the Authority's view this added to the reasons why they should not have attended this fleeing driver incident in the first place – the other reasons being that:

- they were category B vehicles and therefore would need to be replaced with category A vehicles if they became involved in a pursuit (see paragraphs 261-269); and
- they were 25-30 kilometres away from Mr Batt at the time he was located by Eagle (see paragraph 74) and other units were already attending the incident.

285. The Authority does accept, however, that Officers C and D's understanding at the time was that the fleeing motorcycle was heading into their area of operation and they had been asked to attend the incident by dispatcher 2. Officer C said he did not intend to become involved in a pursuit but envisaged that he and Officer D would provide more of a supporting role. Officer D, on the other hand, mistakenly believed that he was being dispatched to stop the motorcyclist as part of an agreed tactical plan (see paragraphs 82-83).

286. As discussed above in paragraph 267, the pursuit policy does not include any reference to category B vehicles acting in a supporting role during a pursuit, or to Police motorcycles being utilised because they are more effective at stopping fleeing vehicles. The policy does however state that other patrol units in the vicinity of a pursuit are not to participate in that pursuit unless given a direction or permission from the pursuit controller (see paragraph 178). This supports the Authority's conclusions that the number of patrol units attending this incident should have been limited by NorthComms (see paragraphs 242-246) and the pursuit controller should have been consulted about the tactics that were to be used to apprehend Mr Batt (see paragraphs 268-269).

## FINDINGS

Officers C and D attended this fleeing driver incident because they believed they had been asked to do so and they could assist in stopping Mr Batt.

The Authority's view is that single-crewed, category B vehicles having radio difficulties are not suited to participating in a pursuit.

## ISSUE 5: THE ROAD BLOCK

287. Officers L and M set up a road block near the intersection of Luckens Road and Hobsonville Road. Both officers believed that Mr Batt was being actively pursued by Police at the time. Officer L said that he used the road block in an attempt to stop Mr Batt and preserve the safety of members of the public (see paragraph 121). Officer M has advised the Authority that she was not aware that Officer L's actions constituted a road block that required authorisation.
288. Section 317B of the Crimes Act 1961 governs the use of road blocks by Police. Section 317B(8) defines a road block as: *"any form of barrier or obstruction preventing or limiting the passage of vehicles"*.
289. Section 317B(1) provides that a road block must be authorised by a senior officer who is at least at the level of sergeant (see paragraph 200). Officer L and Officer M were both constables. Neither of them sought authorisation from NorthComms or a senior officer, or advised that they had set up the road block.
290. Section 317B(1) also states that the person authorising the road block must have reasonable grounds to suspect that there is in or on any vehicle any person who has committed an offence punishable by a term of imprisonment of 7 years or more, or is unlawfully at large. Neither of these situations applied in the case of Mr Batt.
291. When interviewed, Officer L said he set up the road block under section 35 of the Policing Act 2008 (see paragraph 201). Section 35 states that a constable may temporarily close to traffic any road *"leading to or from or in the vicinity of a place"* if he or she has reasonable cause to believe that danger to a member of the public exists or may reasonably be expected at or near that place.
292. The Authority's view is that section 35 of the Policing Act does not cover a situation where a road block is set up in order to apprehend a fleeing driver (during what the officers thought was a pursuit). The legislation refers to danger existing at or near a *"place"*, rather than the danger associated with a reckless driver. Furthermore, setting up a road block is not one of the tactical options listed in the pursuit policy. Whilst the

Authority appreciates that Officer L had good intentions, his actions were risky and were not justified under law or policy.

293. At 9.44:42pm Officer B aboard Eagle advised NorthComms that Mr Batt was “coming up behind stationary traffic, slowing down.” However he did not report that there was a Police road block in place. He later said he did not initially realise that Mr Batt had possibly gone through a Police road block (see paragraph 128).
294. Officer L tried to grab hold of Mr Batt as he rode through the road block but he accelerated away. This was a high risk move which should not have been attempted by Officer L. His actions put both Mr Batt and himself at considerable risk of injury.
295. After reviewing the FLIR footage, the Authority is of the view that Mr Batt increased his speed significantly after riding through the roadblock and that the pursuit controller’s decision to call all units to abandon was justified.

#### FINDINGS

Neither section 317B of the Crimes Act 1961 nor section 35 of the Policing Act 2008 authorised the use of a road block in this situation. If section 317B of the Crimes Act had applied, Officers L and M would have been required to obtain permission from a senior officer before carrying out this tactic.

Officers L and M should have consulted NorthComms about setting up the road block to stop Mr Batt.

Officer L should not have attempted to grab hold of Mr Batt at the road block. His actions put both himself and Mr Batt at considerable risk.

The pursuit controller’s decision to order all units to abandon was justified.

#### ISSUE 6: THE SECOND PURSUIT – HOBSONVILLE ROAD AND DON BUCK ROAD

##### Commencement of pursuit

296. Soon after Mr Batt accelerated away from the road block, he passed the two West units which were parked nearby (Officers H and I, and then F and G). He also passed Officer D, who was waiting on his Police motorcycle in the middle of the road opposite Officers F and G. Officer D activated his motorcycle’s red and blue warning lights as Mr Batt approached, and then activated his siren as he followed him down Hobsonville Road at speed.

297. Officer D has said that he believed he was taking the lead position in an active pursuit. Over ten minutes had passed since he first told dispatcher 2 that he would attend this incident, but during that time he did not seek information about the reason for the pursuit or the risk factors involved in pursuing Mr Batt. There was no commentary from Eagle (which was using a different radio channel) or from pursuing units (because it was an abandoned pursuit). The only updates provided by dispatcher 2 were about Mr Batt's location.
298. The lack of up-to-date communications about the pursuit, especially in relation to the risks associated with it, should have led Officer D to realise that either he was on the wrong radio channel or Mr Batt was not actually being actively pursued – in fact both were the case (see paragraph 95). He later said it did not occur to him that he was on the wrong channel. He thought he had been asked to stop the motorcycle as a tactical option because “[Police] *motorcycles are very good at stopping bikes*” (see paragraphs 81-82). Having reviewed the NorthComms transmissions, the Authority finds that Officer D was mistaken in his belief that he had been specifically requested, as part of an agreed tactical plan, to apprehend Mr Batt (see paragraphs 83-87).
299. The Authority accepts that Officer D believes, from his experience, that Police motorcycles are better at stopping vehicles (especially motorcycles) than other Police vehicles. However in this case Mr Batt did not stop, even though Officer D gave him considerable time and distance to do so. Officer D could have chosen to abandon at that point – but instead he chose to continue following Mr Batt and to commence a pursuit.
300. As discussed above, Officer D had not heard the order to abandon on the West channel because he was still using the Metro channel. Since Officer D was not aware that the pursuit of the motorcycle had earlier been abandoned, he did not seek permission from the pursuit controller to recommence the pursuit as required by policy (see paragraphs 187 and 189).
301. Officer D later said that he continually conducted risk assessments as he was following Mr Batt. He estimated that Mr Batt's speed on Hobsonville Road was about 80-85 kph (in a 50 kph zone), and did not initially consider that the risks involved in conducting a pursuit outweighed the need to apprehend the offender.
302. Officer D was riding a category B Police motorcycle and had a gold licence. Although category B vehicles are authorised to engage in pursuits, Police policy requires that the pursuit controller replace a category B vehicle involved in a pursuit with a category A vehicle as soon as possible. Category B vehicles are less suited to engage in pursuits than category A vehicles due to weight and safety reasons.
303. The West units that were parked nearby were marked, double-crewed, category A vehicles but did not pursue Mr Batt. Officer D has said that he did not wonder why they

were not pursuing Mr Batt because he thought they were also category B vehicles and that he had been specifically asked to stop the motorcycle.

**FINDING**

Officer D did not comply with policy in respect of recommencing the pursuit because he did not know the pursuit had earlier been abandoned.

**Communication**

304. Although Officer D believed he had taken over as the lead vehicle in an active pursuit, he did not immediately advise NorthComms that he had begun following Mr Batt. An officer who has taken the lead position in a pursuit would normally be expected to immediately start giving NorthComms a commentary of the risk factors involved.
305. Officer D later said that the Metro channel was busy and that he was trying to get through to NorthComms but was unable to do so until 9.46:15pm (see paragraphs 142 and 151).
306. In relation to this Officer C said in his Police statement that:

*“As I travelled [towards Hobsonville] I noticed that there was a lot of radio traffic on the designated metro channel of which the majority of the units were not from motorway stations. With units from other areas asking for vehicle checks and multiple person checks and being permitted these requests delayed any important information being passed on. I feel this clogged up vital air time for motorways units using the channel.”*

In this case dispatcher 2 had agreed to conduct the person checks because he thought the motorway units would have switched over to the West channel.

307. At 9.46.14pm, about 45 seconds after he had begun following Mr Batt, Officer D put a priority call through to dispatcher 2 on the Metro channel and advised that the motorcycle had turned left past Westgate (i.e. left at the Don Buck roundabout) and was now travelling at a speed of 122 kph. He did not, however, say that he was in pursuit (see paragraph 173 for policy).
308. Dispatcher 2 later said he was not sure where Officer D was at this point or how close he was to the fleeing motorcyclist. He asked Officer D to switch over to the West channel which was controlling the incident, and immediately after this Officer D reported that the motorcycle had crashed (see paragraphs 155-159).
309. Officer B, who was aboard Eagle, was in a position to see this pursuit but did not report it to NorthComms. He later said that he had not realised the motorcyclist following Mr Batt

was a Police motorcyclist. At the time Officer B was discussing the order for Eagle to abandon with the pursuit controller on the West channel (see paragraphs 143-145). Mr Batt's motorcycle crashed about five seconds after this discussion ended.

310. When Officer F saw Officer D begin to follow Mr Batt, he realised that Officer D may not have heard the call to abandon pursuit on the West channel and sensibly asked dispatcher 3 to transfer that information to the Metro channel (see paragraph 141). However, no further information on Officer D's actions was passed to NorthComms. Therefore neither NorthComms nor the other patrols were aware that Officer D was in pursuit.

#### FINDINGS

Officer D did not fully comply with the communications requirements of the pursuit policy in relation to his commencement of the pursuit.

Officer B aboard Eagle did not report that Officer D had begun pursuing Mr Batt because he did not realise that it was a Police motorcyclist following him.

Due to an absence of commentary neither NorthComms nor the other patrols were aware that Officer D was in pursuit.

#### Speed and manner of driving

311. Pursuit policy requires officers to drive in a manner that prioritises the safety of the public and staff. Officer D activated his warning lights and his siren when he began following Mr Batt. However he turned off his siren when he was transmitting a message to dispatcher 2 at 9.46:15pm (see paragraph 152). While Officer D has explained that he felt this was necessary in order to communicate with dispatcher 2, turning off the motorcycle's siren while engaged in a pursuit was a breach of Police policy. The Authority's concerns about this practice are discussed above at paragraphs 279-283.
312. The distance between the motorcycles varied throughout the pursuit, but for the most part Officer D appears to have been about 50-100 metres behind Mr Batt. Towards the end the gap widened to about 250 metres.

313. Officer D reported to dispatcher 2 that the speed of the pursuit had reached 122 kph (in a 50 kph zone).<sup>7</sup> When interviewed by the Authority, Officer D said that was the top speed he reached during the pursuit, and very shortly afterwards he decided to abandon.

**FINDINGS**

Officer D breached Police policy by turning off his motorcycle's siren (albeit briefly) during the pursuit.

The high speed reached by Officer D during the pursuit was dangerous and put the safety of the public at risk.

**Ongoing risk assessment/abandonment**

314. Officer D said that once he had commenced the pursuit, he was continually assessing the risk involved. When he saw that the speed of the pursuit had reached 122 kph, he considered it to be too dangerous and was going to abandon the pursuit. However Mr Batt then slowed down and complied with a traffic sign, which made him reconsider whether he should abandon. After Mr Batt quickly disappeared around a bend in the road, Officer D decided that he should not continue the pursuit due to Mr Batt's speed and began slowing down (see paragraphs 153-154).
315. He was looking for a street sign so that he could report the location of abandonment to dispatcher 2 when he saw Mr Batt's motorcycle crashing in the distance. He immediately reported this to NorthComms and rode towards the crash in order to provide first aid to Mr Batt.
316. When abandoning a pursuit, an officer must decrease his or her speed to the speed limit, then deactivate the warning lights and sirens and pull over (see paragraph 185 for policy).
317. The FLIR footage from Eagle shows that the distance between the two motorcycles was increasing before the crash occurred. Officer D was about 250 metres behind Mr Batt when he crashed.

**FINDING**

Officer D did not have the opportunity to fully comply with pursuit policy in respect of abandonment.

---

<sup>7</sup> The pursuit policy required the pursuing officers to consider the speed limit as part of their risk assessment but did not require the officers to report this information to NorthComms. This has changed with the introduction of the fleeing driver policy (see paragraph 168), which now requires the officers to report the actual speed and the posted speed limit at the same time.





## Subsequent Police Action

INDEPENDENT POLICE CONDUCT AUTHORITY

318. Officer D has been subject to a Police Code of Conduct inquiry in respect of his pursuit of Mr Batt.
319. Since this incident, Police have upgraded from an analogue radio system to a digital radio system which is more secure and only allows one person at a time to transmit a message. The digital system also has greater range, lessening the need to change radio channels due to transmission difficulties. The Authority understands that the digital radios on Police motorcycles are easier to read and operate than the old analogue radios.
320. Police have also implemented hands free technology in Police vehicles, which has improved the ability of single-crewed Police patrol units to communicate over the radio. However changing radio channels is not hands free and remains a problem for single-crewed patrols. See the Authority's recommendation to the Commissioner of Police at paragraph 332(5).





# Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

321. Officer A was justified in attempting to stop Mr Batt on Whangaparaoa Road for traffic enforcement purposes. For the most part he complied with law and policy during the pursuit.
322. Dion Batt demonstrated by his actions that he was prepared to risk his life and the lives of others to avoid being caught by Police.
323. After the pursuit by Officer A was abandoned, a search phase began and Eagle located Mr Batt within five minutes. Patrol units on the North Shore channel and the Metro channel began urgent duty driving towards Mr Batt's location in an attempt to apprehend him. When Mr Batt turned off the Northern Motorway and headed west towards Hobsonville, West units also began driving towards Mr Batt and control of the incident was ultimately handed over to the West channel.
324. During this time, there was a lack of command and control exercised by NorthComms – largely due to the fact that the pursuit controller was not informed that Mr Batt had been located by Eagle. Other problems included that:
  - multiple radio channels were running the incident simultaneously;
  - there was no clear direction from dispatcher 2 that the units on the Metro channel should switch over to the West channel;
  - there were too many units attending the incident, including category B vehicles;
  - there was a failure by the Metro and West dispatchers to clearly articulate that the pursuit had been abandoned and was no longer active; and
  - the pursuit controller took too long to intervene when he did become aware that units were following Mr Batt.
325. Two of the motorway units, Officers C and D, also reported that they experienced communication difficulties in respect of their inability to (i) change their vehicles' radio channel safely while urgent duty driving and (ii) hear the radio when the siren is

activated. The Authority has concluded that Officers C and D should not have attended this fleeing driver incident because of these communication issues and the fact that they were in single crewed, category B vehicles. See the Authority's recommendations to the Commissioner of Police at paragraphs 332(5) and 332(6).

326. As part of the attempt to stop Mr Batt, Officers L and M set up a road block on Hobsonville Road. They did not consult NorthComms or a senior officer before setting up this road block, which was not authorised by law or policy. Officer L made a high risk attempt to grab hold of Mr Batt at the roadblock but Mr Batt evaded him and rode through the road block by travelling onto the wrong side of the road.
327. After riding through the road block, Mr Batt increased his speed significantly. The pursuit controller then ordered all units, including Eagle, to abandon.
328. Officer D, however, was still on the Metro channel and did not hear this command. He began pursuing Mr Batt, and a short time later Mr Batt crashed at a roundabout on Don Buck Road and suffered serious injuries.
329. The Authority has determined that during this second pursuit, Officer D:
- did not request permission from the pursuit controller to recommence the pursuit because he was unaware at the time that the pursuit had earlier been abandoned;
  - did not fully comply with the pursuit policy in respect of communication;
  - breached Police policy by turning off his motorcycle's siren (albeit briefly) during the pursuit;
  - reached a dangerously high speed during the pursuit (120 kph in a 50 kph zone) that was not justified in the circumstances; and
  - did not have time to fully comply with pursuit policy in respect of abandonment before Mr Batt crashed.

### Section 27 opinion

330. 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 that was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
331. Pursuant to section 27(1) of the Act, the Authority has formed the opinion that the following actions were undesirable:
- Officer A did not report his estimations of Mr Batt's speed during the first pursuit.

- Officers C and D breached Police policy by not constantly using their sirens while urgent duty driving.
- Dispatcher 1 failed to advise the pursuit controller that Eagle had located Mr Batt.
- The pursuit controller took about five minutes to intervene after he first realised that patrol units were still following Mr Batt.
- NorthComms failed to assess and limit the number of patrol units (including single crewed, category B vehicles) attending this fleeing driver incident.
- NorthComms used multiple radio channels simultaneously to run this incident.
- Dispatcher 2 did not clearly direct the motorway units on the Metro channel to switch to the West channel.
- There was a lack of clear communication about what type of incident this was on the Metro channel and the West channel.
- Officer C refused to switch to the West channel when dispatcher 2 advised that it was now running the incident.
- Officer D attended this fleeing driver incident despite problems communicating when his motorcycle's siren is activated.
- Officers L and M set up a road block that was not authorised under law or policy. They did not obtain approval for this tactic from NorthComms or a senior officer.
- Officer L put himself and Mr Batt at considerable risk by attempting to grab hold of Mr Batt at the road block.
- Officer D thought he was joining in an active pursuit – consequently he did not comply with policy in respect of recommencing a pursuit.
- Officer D did not fully comply with the pursuit policy in respect of communication.
- NorthComms and other patrols were not aware that Officer D was in pursuit of Mr Batt following the order to abandon.
- Officer D breached Police policy by turning off his motorcycle's siren while engaged in a pursuit.
- Officer D reached a dangerously high speed during his pursuit of Mr Batt.





# Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

332. Pursuant to section 27(2) of the Act, the Authority recommends that the New Zealand Police:

- 1) amend the fleeing driver policy so that dispatchers are required to:
  - give the following warning when a search phase is commenced: *“Units involved in this search phase are not to engage in urgent duty driving.”*;
  - notify the pursuit controller when the fleeing vehicle is located during a search phase; and
  - clearly state when the search phase has ended;
- 2) review and amend the fleeing driver policy and the Police air operations policy to ensure that the role and responsibilities of Eagle during a fleeing driver incident are clearly defined;
- 3) review and amend the fleeing driver policy to include, under the heading ‘Risk assessment factors’, consideration of the type of vehicle the offender is driving;
- 4) review and amend the fleeing driver policy so that:
  - the pursuit controller is responsible for directing units to change radio channels during a fleeing driver incident, and is required to consider the operational capabilities of the Police vehicles involved in the pursuit before doing so; and
  - all units that have been directed to change channels must do so when appropriate and identify themselves to the dispatcher on the dedicated channel;
- 5) review the steps needed for officers to change radio channels whilst responding to an incident to ensure that this action can be completed in a timely manner and with due regard for safety;

- 6) review the impact the audible siren has on an officer's ability to hear the Police radio and seek improvement to this operational capability if required; and
- 7) clarify their policy in respect of the use of road blocks/road closures, providing an explanation of the law and whether their use during a fleeing driver incident is acceptable; and ensure that any such clarification of Police policy is reflected in officer training.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

4 February 2013

# About the Authority

## WHAT IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

---

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

It is not part of the Police – the law requires it to be fully independent. The Authority is 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?

---

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.

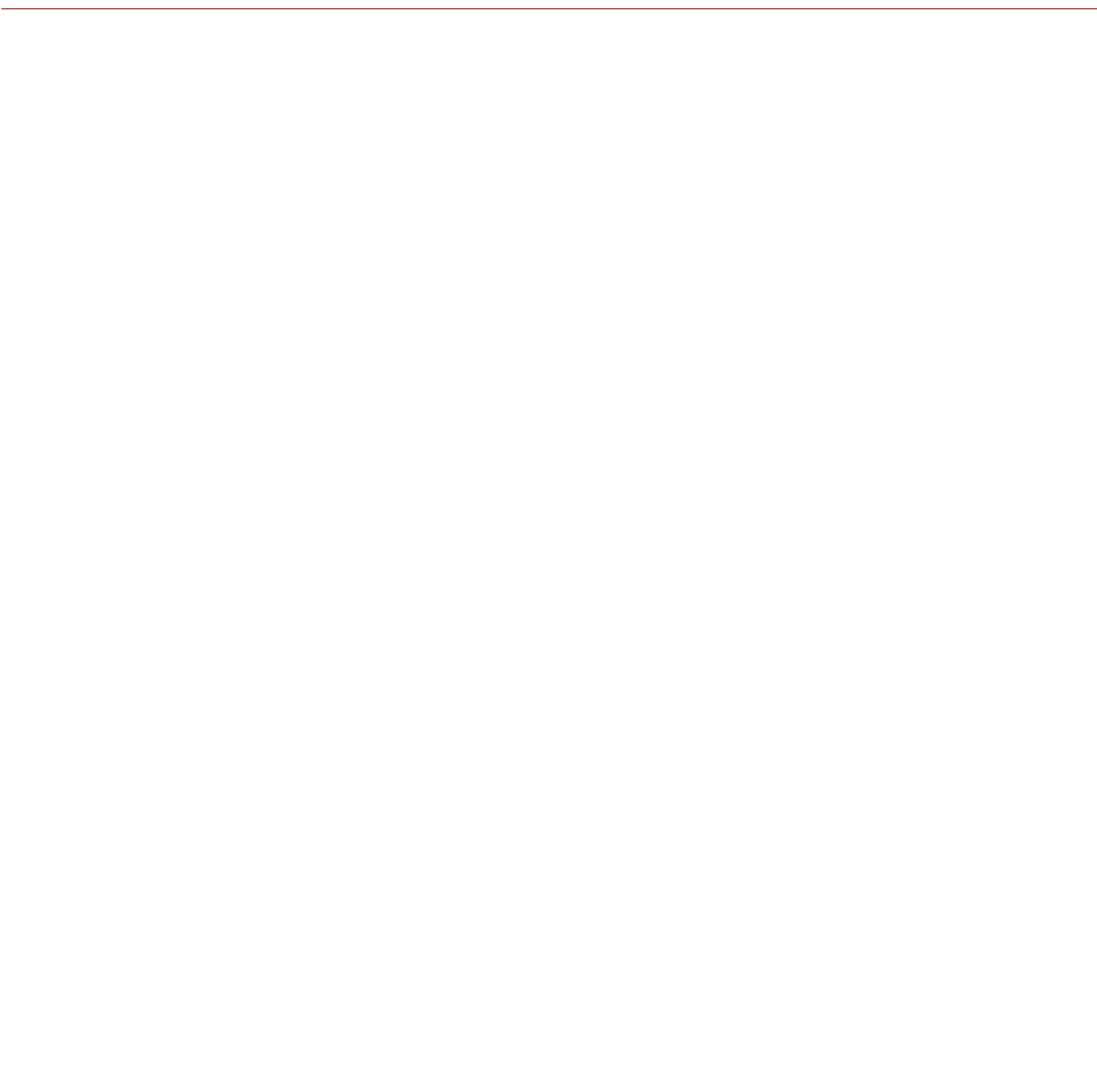
On completion of an investigation, the Authority must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



**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)