



# Fatal Pursuit of Ayla Nelson-Boyd

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. At approximately 11.47pm on Saturday 16 November 2013, Ayla Nelson-Boyd, aged 21, lost control of her vehicle and crashed into a tree while fleeing from Police during a pursuit in Whanganui.
2. Ms Nelson-Boyd died at the scene. Her six passengers, whose ages ranged from 16 to 20, received minor to serious injuries.
3. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

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### Summary of events

4. At about 4.30pm on 16 November 2013, Police forbade Ms Nelson-Boyd from driving for twelve hours after she failed a breath alcohol test at a Police checkpoint on Cross Street in Whanganui. Police confiscated Ms Nelson-Boyd's car keys and she was picked up from the checkpoint by her grandfather.
5. Later that afternoon, Ms Nelson-Boyd obtained the spare set of keys to her car.
6. Around 7.45pm Ms Nelson-Boyd drove six friends to a party in Bulls. Ms Nelson-Boyd's friends later said that she was drinking at the party and insisted on driving back to Whanganui despite other partygoers trying to take her keys from her.
7. Around 11pm Ms Nelson-Boyd drove back to Whanganui with her six friends.
8. At about 11.45pm Officers A and B were on mobile patrol in a marked category A Police vehicle in Whanganui as part of a combined Police Traffic Alcohol Group operation.

9. While driving west on Koromiko Road the officers saw Ms Nelson-Boyd's silver Mitsubishi Diamante travelling towards them. Both officers thought that the vehicle looked overloaded in the back due to the angle of its headlights. Officer A later told Police that he also saw the vehicle veer to the left as it passed the patrol car. Based on these factors, Officer A suspected that the driver was intoxicated and decided to stop the vehicle in order to carry out a breath test.
10. Officer A activated the patrol car's warning lights to signal to the driver to stop and performed a U-turn before accelerating to catch up with the Mitsubishi. Ms Nelson-Boyd did not slow down and accelerated away from Police.
11. Officer A then activated the patrol car's siren and Officer B radioed the dispatcher at the Police Northern Communications Centre (NorthComms) stating, "10/9 Pursuit." The code 10/9 notifies NorthComms that the communication is urgent.
12. As required by Police policy, Officer A carried out a risk assessment before deciding to commence a pursuit, taking into account the absence of other vehicle traffic and the good road conditions.
13. When the NorthComms dispatcher asked for the vehicles' location, Officer B reported that they were approaching Cambridge Street and then turning right onto Gonville Avenue. He also advised that they were in a category A patrol car, that Officer A was a gold certified driver, that their speed was 70kph in a 50kph zone, that the Mitsubishi driver was driving within her lane and that her driving was "good".
14. The dispatcher then provided the officers with the pursuit warning as required by Police policy, saying "If there is any unjustified risk to any persons you are to abandon the pursuit immediately, acknowledge?"
15. Officer B acknowledged the pursuit warning before stating that they were "turning left, left onto Alma Road." The dispatcher requested the reason for the pursuit and Officer B responded, "ah, suspected drunk driver, Comms." Officer B stated that the vehicles were turning left onto Abbott Street, provided the registration number of the Mitsubishi and stated that "speed is now ninety over fifty, coming up towards Heads Road, Comms".
16. As the vehicles turned onto Abbot Street they passed Officer C, a dog handler, travelling in a marked Police vehicle. Officer C activated the lights and sirens on his patrol car and followed Officers A and B at a distance of about 200 metres.
17. As the vehicles turned left into Heads Road, Officer B advised the dispatcher: "driver's still good Comms, he's staying within his lane."

18. At this time both Officers A and B considered that Ms Nelson-Boyd's manner of driving was not too risky because she was remaining within her lane and slowing down before corners and intersections. Officer A also kept the patrol car at a reasonable distance behind the Mitsubishi in order to react to any hazards and alert other road users to the pursuit.
19. The vehicles continued on Heads Road. As they passed Gunn Street, Officer B told the dispatcher that there were five people in the Mitsubishi. Officer B next notified the dispatcher that the Mitsubishi was *"turning left, left onto Kings Avenue"*. As the vehicles passed Tawa Street, Officer B told the dispatcher that the Mitsubishi was *"still going straight"* and *"speed is now seventy over fifty"*.
20. The dispatcher requested the Mitsubishi driver's manner of driving as Officer A entered Swiss Avenue. Officer B did not have time to provide this information. As the officers rounded the slight left hand bend into Swiss Avenue they saw that the Mitsubishi had collided with a tree. Officer B immediately notified the dispatcher of the collision and location and requested an ambulance attend the scene.
21. Officer A parked the patrol car so that its headlights lit the scene. Along with other officers, Officers A and B then began providing assistance to the occupants of the vehicle.
22. The pursuit lasted just over two minutes and covered approximately 3.7km in a residential, well lit area of Whanganui. The speed zone throughout the pursuit was 50kph. Officer A's average speed during the pursuit was 70kph but he reached 90kph for a short time on Abbott Street.

### **Ayla Nelson-Boyd**

23. At the time of this incident Ms Nelson-Boyd was a learner driver. Her Mitsubishi did not have a current warrant of fitness.
24. Ms Nelson-Boyd's blood alcohol level at the time of the crash was 102 milligrams per 100 millilitres of blood. The legal blood alcohol for a New Zealand driver of 20 years or older is 80 milligrams per 100 millilitres of blood.

### **Police involved**

25. Officers A, B and C were in marked category A Police vehicles. Officer A and Officer C were Gold class drivers. All officers were therefore certified to engage in pursuits.

## THE AUTHORITY'S FINDINGS

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### Commencement of the pursuit

26. Under section 114 of the Land Transport Act 1998, Officers A and B were justified in deciding to signal Ms Nelson-Boyd to stop in order to administer a breath alcohol test. The Police fleeing driver policy authorised the officers to commence a pursuit when Ms Nelson-Boyd failed to stop and attempted to evade apprehension.
27. The fleeing driver policy requires Police to conduct a risk assessment prior to commencing a pursuit. As discussed in paragraph 12, Officer A considered relevant risk factors before commencing pursuit and concluded that the need to apprehend the driver of the Mitsubishi outweighed any risk involved in pursuing.

#### FINDING

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

### Communication

28. The fleeing driver policy requires Police to notify NorthComms when they commence a pursuit and to provide situation reports in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit, including whether to direct the abandonment of the pursuit.
29. As required by policy, Officer B advised the NorthComms dispatcher of the pursuit by stating, "10/9 pursuit." The dispatcher then acknowledged the commencement of the pursuit and provided the safety warning.
30. During the pursuit Officer B provided a constant flow of information to NorthComms regarding the location of the pursuit and relevant risk factors, such as Ms Nelson-Boyd's speed, manner of driving, the reason for the pursuit and number of occupants in the Mitsubishi.

#### FINDING

Police complied with the fleeing driver policy in respect of communication during the pursuit.

### Police speed and manner of driving

31. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety. In accordance with the policy, Officer A kept his patrol car's warning lights and siren activated at all times during the pursuit.
32. Officer A travelled at an average speed of 70kph during the pursuit. The speed zone throughout was 50kph. For a short time on Abbot Street Officer A reached 90kph. Though this speed was high, the Authority is satisfied that it was justified in the circumstances because there was no vehicle or pedestrian traffic, the road conditions were good and the weather was clear.
33. Officer A maintained sufficient distance between the Police vehicle and Ms Nelson-Boyd's vehicle so that he could both react to hazards and ensure that other possible road users were alerted to the pursuit.

#### FINDING

Officer A complied with the fleeing driver policy in respect of his speed and manner of driving.

### Ongoing risk assessment and the option of abandonment

34. The fleeing driver policy requires Police to abandon a pursuit if at any stage the risk to the safety of the public and the Police outweighs the immediate need to apprehend the driver.
35. Officers A and B continued to assess the level of risk in pursuit and considered that the need to apprehend the driver of the Mitsubishi outweighed the risk in pursuit. As discussed above, both officers considered that Ms Nelson-Boyd maintained a controlled manner of driving during the pursuit by staying in her lane and slowing down before corners. For this reason the officers did not believe the risk was high and did not consider abandonment.
36. Neither officer was aware that Police had forbidden Ms Nelson-Boyd from driving earlier that day.

#### FINDING

Officers A and B complied with the fleeing driver policy in respect of their ongoing risk assessment during the pursuit.

## CONCLUSIONS

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37. Section 27(1) of the Independent Police Conduct Authority Act 1988 requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure was contrary to law, unreasonable, unjustified, unfair, or undesirable.
38. Pursuant to Section 27(1) the Authority has formed the opinion that the actions of Police in this case were justified and complied with applicable law and Police policy.

## ONGOING DISCUSSIONS WITH POLICE

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39. While in this instance the Authority has not found any breaches of policy, the Authority wishes to confirm that it has begun discussion with Police about a review of policies connected with the pursuit of fleeing drivers. This is due to the conflict between the often prescriptive nature of the relevant policies and the reality of a fast-paced, time-pressured situation.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

27 March 2014

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

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 staff who have worked in a range of law enforcement roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- 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 form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



**IPCA**

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