

# Police pursuit of a fleeing driver along Wellington waterfront

## INTRODUCTION

1. On Friday 8 April 2016 a member of the public contacted Police to report that a male occupant of a white Mitsubishi Mirage (the Mitsubishi) had stolen an item of property from a car on Vivian Street, Wellington.
2. Police located the Mitsubishi a short time later and followed it for a short distance as it continued along Oriental Parade towards Kent Terrace. A pursuit was commenced when the driver of the Mitsubishi failed to stop when signalled to do so.
3. The pursuit entered the Wellington waterfront at Taranaki Street and continued at speed through the predominantly pedestrian area. It concluded when the driver of the Mitsubishi stopped near the TSB Bank Arena.
4. The Police notified the Independent Police Conduct Authority of the incident at the request of the Authority, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

### Summary of events

5. At about 1.55pm on Friday 8 April 2016, Police became aware that a male occupant of a white Mitsubishi Mirage (the Mitsubishi) had stolen a radar detector from another vehicle parked on Vivian Street, Wellington. The Mitsubishi was seen to drive off towards the Mount Victoria area following the theft.
6. Details of the incident, including the registration of the Mitsubishi and the name and address of its registered owner, were broadcast by a dispatcher at the Police Central Communications Centre (CentComms).

7. About eight minutes later Officer A, a gold class driver<sup>1</sup> in an unmarked category B Police car<sup>2</sup> and one of a number of Police units that were looking for the Mitsubishi, saw it on Oriental Parade. Officer A saw that the Mitsubishi contained four occupants. Officer A told the Authority that the driver *“was a male and he had a tattoo on the side of his head.”* Officer A did not recognise the driver or the other occupants but was aware that the Wellington area was *“experiencing a significant amount of radar detectors being stolen from vehicles”*.
8. Officer A followed the Mitsubishi for a short distance as it continued along Oriental Parade in the direction of Kent Terrace. Officer A did not alert the occupants of the Mitsubishi to his presence and followed the vehicle at normal road speeds.
9. According to Officer A, as the Mitsubishi approached a lay-by directly opposite Cable Street some of its occupants appeared to realise that they were being followed. Officer A signalled the driver of the Mitsubishi to stop by activating his Police vehicle’s lights and sirens.
10. When the driver of the Mitsubishi did not stop, Officer A radioed CentComms and told the dispatcher<sup>3</sup> that he had located the Mitsubishi and that the driver was fleeing. The dispatcher immediately notified the shift commander<sup>4</sup> that a pursuit was in progress, a requirement of the Police fleeing driver policy in force at the time of this incident.
11. As soon as Officer A told CentComms he had a fleeing driver, the driver of the Mitsubishi pulled into the lay-by opposite Cable Street and came to a stop. According to Officer A, all four of the vehicle’s doors opened and he told CentComms: *“just stopping now, everyone’s decamping.”*
12. Believing that Officer A was no longer in pursuit of the Mitsubishi, the dispatcher advised the shift commander that the pursuit had ended. The dispatcher had no opportunity to issue the pursuit warning required by the fleeing driver policy (see paragraph 15) due to the speed of preceding events.
13. However, immediately after two female passengers got out of the rear of the Mitsubishi its driver continued driving in the direction of Kent Terrace.
14. As the driver of the Mitsubishi drove off Officer A told CentComms: *“just heading past the fire station...Kent Terrace.”* This prompted the dispatcher to seek confirmation that the Mitsubishi was still moving. Officer A replied: *“Yeah, copy. Confirm, failing to stop.”*
15. The dispatcher told Officer A: *“Roger. If there’s any unjustified risk to any person you are to abandon pursuit immediately. Acknowledge?”* At the same time as giving the pursuit warning

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<sup>1</sup> Gold class drivers are authorised to engage in urgent duty driving and pursuits.

<sup>2</sup> A category B Police car is an unmarked Police vehicle. This type of car is permitted to commence a pursuit but must be replaced by a Category A marked car as soon as possible.

<sup>3</sup> The dispatcher advises the shift commander when a pursuit has commenced, maintains radio communications with the units involved in the pursuit, obtains situation reports from the pursuing units and communicates instructions from the pursuit controller. The dispatcher is also responsible for communicating the pursuit warning to the lead pursuit unit.

<sup>4</sup> The shift commander generally takes on the role of pursuit controller when notified that a pursuit is underway. The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options.

the dispatcher notified the shift commander that a pursuit was underway again. The shift commander assumed the role of pursuit controller and began managing the pursuit.

16. After the dispatcher gave the pursuit warning Officer A replied: *“Copy, going Tory Street and looking like Cable Street now. Wrong side of the road. Just trying to block it in.”* The dispatcher acknowledged this transmission about 14 seconds later.
17. Officer A told the Authority that at the intersection of Cable and Tory Streets: *“there was condensed traffic at a red light and the [Mitsubishi] was trying to...navigate through that traffic, so they were stationary...I thought I would be behind the vehicle...and the two people would run from [it].”*
18. However, after driving along Tory Street and turning left into Cable Street, the driver of the Mitsubishi manoeuvred around the vehicles stopped at the red light and mounted the pavement before re-joining the road and continuing towards Taranaki Street, about 200 metres away. Officer A remained behind the Mitsubishi as it negotiated the stationary vehicles and continued pursuing it as it approached the intersection with Taranaki Street. About 17 seconds after Officer A told CentComms that the Mitsubishi was *“going Tory Street and looking like Cable Street now”* (see paragraph 16) he told CentComms: *“Traffic stationary but I’ve had to go slowly through it to avoid a crash.”*
19. The dispatcher told the Authority that, based on Officer A’s first transmission following the pursuit warning (see paragraph 16), he thought the Mitsubishi was on the wrong side of the road travelling down Tory Street and that Officer A was attempting to block it in before it reached Cable Street. He did not realise that this was not the case until after the pursuit had ended.
20. The pursuit controller told the Authority that he assumed oversight of the pursuit at about the time Officer A told CentComms that the Mitsubishi was on the wrong side of the road and he was trying to block it in. The pursuit controller formed the view that Officer A was on Cable Street and further stated that he was *“aware that there was a vehicle wanted for stealing something...I think it was a radar detector or something similar”*.
21. When asked about his decision to allow the pursuit to continue the wrong way along Cable Street, the pursuit controller told the Authority: *“The fact that it’s coming down a one way street is actually a concern. But...there’s also mention of stationary traffic<sup>5</sup> and...I’m quite aware that there’s quite a lot of vision from the people going the other way. So I tended to think that going down a one way street was safer than going on the wrong side of a normal street. And the reason behind that is because all the traffic is facing the right way. They’ve got clear vision as far as what they’re watching... it’s a nice big wide road so it’s actually relatively safe as far as pursuits go.”*
22. Officer A told the Authority that he was satisfied that both the Mitsubishi and his Police car were visible to the drivers of cars at the Cable Street traffic lights and, knowing that a pursuit

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<sup>5</sup> Officer A told CentComms that he had negotiated stationary traffic about 17 seconds after transmitting: *“Copy, going Tory Street and looking like Cable Street now. Wrong side of the road. Just trying to block it in.”* The pursuit controller would not therefore have been aware of the presence of stationary traffic at the time he completed his initial risk assessment.

was in progress, he was confident the other drivers would not take action that exposed anyone to increased risk. Officer A also told the Authority that after negotiating this traffic he saw more cars stopped at another red traffic signal at the intersection with Taranaki Street. Again, Officer A was of the view that the drivers of these cars would not move until the Mitsubishi and Police car were clear. Officer A did not see any vehicles indicating to turn right into Cable Street as he approached Taranaki Street.

23. As he reached Taranaki Street, Officer A told CentComms: *“going right now. Right, heading through the carpark by the dive platform.”* About 30 seconds had passed since the pursuit warning was given<sup>6</sup>.
24. In response to Officer A’s transmission, the dispatcher asked: *“Is that the carpark next to Te Papa? ...confirm location.”* Officer A did not immediately respond to this transmission. His next transmission to CentComms was 14 seconds later (see paragraph 54).
25. The dispatcher told the Authority that he *“expected [the pursuit] to finish then”* due to the presence of bollards. The dispatcher further stated that: *“I would not have expected them to get down to the waterfront.”*
26. The pursuit controller told the Authority: *“I knew the wharf was enclosed, that we could block [the Mitsubishi]...Unfortunately it went past the bollards...I’m pretty aware of the environment around the wharf and it was a case where I couldn’t believe the vehicle could actually get through. So from there I went to the assumption that they’re on foot now and running towards the TSB Centre”<sup>7</sup>.*
27. Unaware that a bollard had been removed from the entrance to the waterfront, both the dispatcher and pursuit controller proceeded on the assumption that the pursuit had ended and the occupants of the Mitsubishi were now on foot.
28. Officer A told the Authority that he assumed the pursuit would come to an end when the Mitsubishi encountered the bollards at the entrance to the waterfront. When it continued Officer A told the Authority: *“the next point is the bridge. There is likely to be a bollard on the bridge as well...and that once it got onto the waterfront area the doors started to open...making me feel from my previous experience that [the occupants] were about to stop and run.”*
29. The bridge referred to by Officer A (see paragraph 28) is a pedestrian footbridge that spans the entrance to the lagoon next to The Boatshed Function Centre. It has two walkways separated by a tall metal partition. The walkway on the lagoon (western) side is narrower than the neighbouring walkway and is humped, whereas the other walkway is flat.

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<sup>6</sup> Officer A told a Police investigator that he made this transmission halfway between the dive platform and the footbridge spanning the entrance to the lagoon. The Authority is of the view that had this been the case, Officer A’s transmission was not only out of context but also misleading. The Authority is therefore satisfied that the transmission was made as indicated in paragraph 23.

<sup>7</sup> An earlier pursuit that had recently been reviewed by the pursuit controller had ended at the wharf when the fleeing driver crashed into a bollard.

30. Mr Z, a former New Zealand Police inspector with experience in the role of pursuit controller, was running along the waterfront in the direction of the TSB Bank Arena and was near the Wharewaka Function Centre when the driver of the Mitsubishi drove onto the waterfront.
31. Mr Z told the Authority that it was a *“nice sunny day, children everywhere...[the waterfront] was pretty full...and then...I heard...a roar of an engine and a screeching of tyres and I looked, and to my amazement I saw a vehicle...come through the bollards at speed...and then it became apparent to me that it was a Police pursuit because behind that was this plain...Police car with lights and siren on.”* Mr Z’s account regarding the number of people present on the waterfront is reinforced by the accounts of other witnesses interviewed by the Authority.
32. Mr Z told the Authority that in his opinion the Mitsubishi was travelling at between 90-100kph as it entered the waterfront: *“It was dive or get run over...there were people diving everywhere.”* Mr Z further stated that Officer A’s Police car was between 50-100 metres behind and matching the Mitsubishi’s speed.
33. When the Mitsubishi reached the footbridge Mr Z told the Authority that it slowed from 80-90kph to about 50kph and: *“just went straight over the bridge and just [accelerated] again.”*
34. In Mr Z’s view: *“whoever was driving that [Police car]...probably broke every bloody rule in the book to be honest.”* Mr Z was also of the view that the presence and proximity of the Police car may have encouraged the driver of the Mitsubishi to take unnecessary risks: *“But, if there was anything positive I could say about that was that if we didn’t hear [Officer A’s] siren there would have been fatalities.”*
35. Despite Officer A’s belief that a further bollard was located at the footbridge (see paragraph 28), this was not in fact the case and the driver of the Mitsubishi was able to continue unhindered towards the TSB Bank Arena via the narrower footbridge walkway.
36. Officer A told a Police investigator that he saw that the Mitsubishi *“had gone over the bridge and I decided that again I knew that further down there were bollards [at the TSB Bank Arena]...I also knew that there were pedestrians in the area and that my sirens going would alert them to the presence of the [Mitsubishi] on the waterfront.”* Officer A therefore continued the pursuit.
37. Officer A told the Authority that when he reached the footbridge the Mitsubishi *“was well off the bridge and so I got to it, slowed down, looked at the path ahead of me and there was no one on the bridge, drove over, looked at my next stretch of road. There were people on the right but no one...where I intended to drive. Drove straight down there with my lights and sirens on at a speed less than the white vehicle was travelling...I couldn’t see the vehicle at all so I had lost complete sight of it...I would say it was between 100 to 200 metres in front of me.”*
38. Mr X and Mr W were already on the footbridge when the Mitsubishi began to cross it. Mr X told Police that both he and Mr W *“were on the right hand side bridge, when facing Te Papa...as we were about halfway...a man yelled out “Watch Out”...I looked up and could see a car on the bridge coming towards us. It only just had enough space to fit onto the bridge.”*

39. Mr X further told Police: *"I realised there was no time to run backwards and the only option was to jump off the side. I thought about jumping into the water but then realised I could stand on the beam holding onto the rail...the car was doing around 70[kph]. It was quite fast...Not long after the Police car went through...The Police car's speed was not as fast as the [Mitsubishi's]...I think it was about 50[kph]."*
40. Mr W told Police that he was *"about halfway over the pedestrian bridge"* when he *"heard yelling and screaming...I heard one guy yelling for people to get out of the way."* He then saw *"an old Mitsubishi driving in my direction...The car appeared to be driving very fast...about 70[kph]."*
41. Mr W further stated: *"I saw [Mr X]...climb over the bridge railing on the lagoon side and stand on a metal beam sticking out of the bridge...it was too far for me to run back and out of the way...I looked over the side of the bridge and saw there was a metal beam I could climb onto also...The [Mitsubishi] was still travelling...at least 70[kph] over the bridge"*
42. However, Mr W indicated that he had time to climb back onto the bridge and run towards Frank Kitts Park before the first of two<sup>8</sup> Police cars *"came across the same side of the bridge that the [Mitsubishi] had and pulled up near where we were...It was going slowly as it exited the bridge and came towards us."* According to Mr W, after the driver of the Police car had been told which direction the Mitsubishi had gone the *"patrol car then drove in that direction with lights and sirens on...The patrol car appeared to be going at about 40 to 50[kph]...It was approximately 15 seconds behind the [Mitsubishi]."*
43. Ms Y was part of a group supervising a number of school-age children at the time the Police pursuit of the Mitsubishi was underway. Ms Y told the Authority that, as her group approached the footbridge from the direction of Frank Kitts Park, *"we heard screeching noises. We weren't too sure what it was and then one of the boys in our group...told us to jump up on the concrete side by the ocean. If the car was kind of going any faster we probably would have been hit. A few of the girls in my group went into shock and started crying because it was just quite overwhelming for them. The car was going pretty fast and just basically sped off past us"*.
44. Ms Y told the Authority that she saw Officer A's Police car *"not even a minute later."* She further stated that she believed that the Police car was travelling *"maybe like 50[kph], maybe like a little bit over"* and was *"like 100 metres maybe"* behind.
45. Echoing Mr Z's comments, Ms Y also stated: *"I think it helped having their sirens on. I mean if it probably wasn't for that, people probably wouldn't have known that there was another car coming...So I think that was probably a bit of a help."*
46. Officer A told the Authority that after crossing the footbridge the Mitsubishi had *"a 200 metre gap to...the next bollard [at the TSB Bank Arena] and effectively I was damned if I did and I was damned if I didn't. So if I didn't follow it my siren wouldn't have alerted people that there's a*

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<sup>8</sup> The Authority's is satisfied that the car driven by Officer A was the only Police vehicle to pursue the Mitsubishi along the waterfront.

vehicle driving on the waterfront, and if I did then I'd get criticised for driving on the waterfront."

47. Officer A told the Authority that upon reaching the area of waterfront beyond the footbridge he *"slowed down...significantly...and...the gap between myself and the [Mitsubishi] extended and I ultimately lost sight of the vehicle."*
48. Ms V was working at a shop located on the waterfront when she saw the Mitsubishi *"speeding down the waterfront...with another car behind it."* Ms V further stated: *"What...amazed me was how fast both these cars were going...[they were ] so close. I [was] surprised that no-one was killed...[the waterfront] was packed with people...the speed it was going down there was just unnecessary"*.
49. Ms V told the Authority that she estimated the speed of the Police car to be *"at least 70 to 80[kph]."* She further stated: *"I really think the Police were just concentrating on the chase, not seeing what could have been potentially dangerous."*
50. Ms U, who along with Ms Y was supervising a group of school-age children, told the Authority that she was near Frank Kitts Park when *"[the Mitsubishi] just came flying past"*, driving between bollards next to the TSB Bank Arena. She indicated that the Mitsubishi was unable to get onto Jervois Quay due to oncoming traffic. Instead, Ms U saw *"it spinning around and then [the occupants] jumping out and disappearing...then the Police coming straight after."*
51. According to Ms U, the Police car came from *"the same direction that the [Mitsubishi] did"*, was *"about 20 seconds"* behind it, and travelling *"at a very high speed as well."*
52. Mr T was running along the waterfront in the direction of Queens Wharf and had just passed Frank Kitts Park. He told the Authority that he *"heard sirens...coming from an unexpected direction...and turned to look back across the waterfront area...I saw a white vehicle being driven at some speed...in front of Frank Kitts Park and then corner towards the exit from the carpark."*
53. Mr T further stated: *"There was in pursuit an unmarked Police vehicle...I identified that as the source of the siren. That was about 40 metres back"*. Although unable to estimate the speed of the vehicle, Mr T told the Authority *"What I'm in no doubt about is that both vehicles were travelling at an unsafe speed for the location."*
54. About 58 seconds after the dispatcher had issued the pursuit warning, Officer A radioed: *"Coming out by TSB Arena now. We are on the waterfront. I've lost obs for the time being."* This was Officer A's first transmission since the dispatcher had asked him to confirm his location 14 seconds earlier (see paragraph 24)<sup>9</sup>. No other radio transmissions during this 14 second period are audible on the CentComms audio recording provided to the Authority.

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<sup>9</sup> Officer A told the Police investigator that he made this transmission about halfway between the end of the footbridge spanning the lagoon and the end of Frank Kitts Park, despite previously telling the investigator that his normal practice is to transmit details of landmarks *"after I've past the location point"*.

55. When Officer A told CentComms that he had *“lost obs for the time being”*, neither the pursuit controller nor dispatcher realised that the Mitsubishi had been pursued along the waterfront (see paragraph 27).
56. Upon reaching the TSB Bank Arena, and having lost sight of the Mitsubishi, Officer A continued through the bollards next to Frank Kitts Park and towards Jervois Quay.
57. As Officer A approached Jervois Quay, a second Police unit that had approached the TSB Bank Arena from the opposite direction told CentComms that the occupants of the Mitsubishi were on foot. This occurred about 12 seconds after Officer A told CentComms he had lost sight of the Mitsubishi (see paragraph 54).
58. Upon becoming aware that the occupants of the Mitsubishi were on foot, Officer A told the Authority that he had *“broken the traffic lights [on Jervois Quay] with my light and siren”*, turned right and then turned right again into Queens Wharf.
59. The driver of the Mitsubishi was arrested by the second Police unit shortly after CentComms had been told that the Mitsubishi’s occupants were on foot. Officer A remained near the Wellington Museum to help coordinate attempts to locate and arrest the Mitsubishi’s passenger.
60. The passenger was located and arrested about six minutes after the driver had been detained.
61. The item stolen from the vehicle on Vivian Street was recovered from the Mitsubishi.

### **Fleeing driver and passenger**

62. As a result of this incident, the driver of the Mitsubishi was charged with failing to stop for flashing red and blue lights, driving a vehicle in a dangerous manner and theft. He pleaded guilty to these charges and in September 2016 he was convicted and sentenced to a total of three months’ imprisonment. He was also disqualified from driving for a period totalling nine months.
63. The passenger of the Mitsubishi was charged with theft. He pleaded guilty to this charge and in June 2016 he was convicted and sentenced to 100 hours community work.

### **Subsequent court proceedings**

64. Following a review of his actions and after seeking a legal opinion, Police charged Officer A with dangerous driving.
65. Officer A pleaded guilty to this charge and requested a sentence indication early in the court proceedings.
66. On 1 March 2017, Officer A was discharged without conviction in accordance with section 106 of the Sentencing Act 2002.

67. The Judge’s decision to discharge without conviction was based upon the Police Summary of Facts and defence submissions made during Officer A’s court hearing, which were not contested by the Police prosecutor. This point is further discussed in paragraphs 94-101 (regarding Officer A’s speed) and paragraphs 111-113 (regarding the role of CentComms).

## LAWS AND POLICIES

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### Power to require a driver to stop

68. Section 114 of the Land Transport Act 1998 provides that a Police officer may signal or request the driver of a vehicle to stop the vehicle as soon as is practicable.
69. Section 9 of the Search and Surveillance Act 2012 empowers a constable to stop a vehicle without a warrant to arrest a person if they have reasonable grounds to: suspect that a person has committed an offence punishable by imprisonment; and believe that the person is in or on the vehicle.

### Fleeing driver policy at the time of this incident<sup>10</sup>

70. The overriding principle of the Police fleeing driver policy is that: *“Public and staff safety takes precedence over the immediate apprehension of the offender”*.
71. Officers are required to carry out risk assessments (see paragraph 76) before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police vehicle.
72. If the identity of the offender becomes known, the pursuit must be abandoned, unless there is an immediate threat to public or staff safety.
73. Following the direction to abandon pursuit, all participating Police cars must immediately acknowledge the direction to abandon pursuit, reduce speed, deactivate the Police cars warning lights and siren and stop as soon as it is safe to do so.
74. An abandoned pursuit must not be recommenced without the approval of the Pursuit Controller.
75. Approval to recommence will only be considered if:
- the situation has changed following abandonment; and
  - the risk assessment criteria indicates that the risks involved in the pursuit have reduced, so that the need to immediately apprehend the offender is no longer outweighed by the risks posed by recommencing the pursuit.

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<sup>10</sup> Police fleeing driver policy was updated in July 2016. Policy references in this report relate to the policy in place at the time of the incident in April 2016.

76. Risk assessment criteria that should be considered both prior to initiating and during a pursuit are summarised in this table:

Risk factors	Including...
Speed and manner of driving	<ul style="list-style-type: none"> <li>• what is the speed limit?</li> <li>• what is the manner of driving of the fleeing vehicle? Is it deteriorating or remaining the same?</li> </ul>
Occupant characteristics	<ul style="list-style-type: none"> <li>• is the offender known? Is there an immediate threat to public or staff safety?</li> <li>• what offences have been committed or are suspected of being committed?</li> <li>• is it a stolen vehicle?</li> <li>• how many occupants in the vehicle?</li> <li>• how old are the occupants (observation only)?</li> <li>• what is the condition of the offender's vehicle (observation only)?</li> <li>• are the occupants armed?</li> </ul>
Weather conditions	<ul style="list-style-type: none"> <li>• what are the driving conditions like?</li> <li>• is it raining with slippery roads?</li> <li>• is it dawn or dusk with a chance of sun strike?</li> </ul>
Environment	<ul style="list-style-type: none"> <li>• what is the location of the pursuit? Is it a built-up area, or near a school?</li> <li>• what type of road is it?</li> <li>• what potential hazards are there in the area?</li> </ul>
Traffic conditions	<ul style="list-style-type: none"> <li>• what are the traffic conditions like?</li> <li>• what is the volume of traffic? Is it peak hour traffic?</li> <li>• are there pedestrians around?</li> <li>• what time of the day is the pursuit occurring?</li> </ul>
Officer and vehicle capabilities	<ul style="list-style-type: none"> <li>• is the driver an experienced officer? What is their PPDP classification?</li> <li>• what type of Police vehicle is involved? What is the vehicle classification?</li> <li>• is it a single-crewed unit?</li> <li>• do they have hands-free radio?</li> <li>• is a secondary unit available to take over pursuit commentary?</li> <li>• are non-constabulary persons in the Police vehicle?</li> </ul>

77. After considering the factors detailed above, Police drivers should: "*determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *the occupants of [the] Police vehicle.*

78. *If there is no need to immediately apprehend the fleeing driver or the risks are too great, a pursuit must **not** be initiated, or should be abandoned."*

### Criteria for abandoning a pursuit

79. *"A pursuit must be abandoned when any of the following criteria apply:*

- an offender's identity becomes known and apprehension can be effected later, so long as there is no immediate threat to public or staff safety or the fleeing vehicle's location is no longer known*
- the distance between the primary unit and the offending vehicle is such, that in order for the Police vehicle to catch up to it, the speed involved creates an additional risk, and Police no longer has the ability to warn other road users of the fleeing vehicle*
- if a person is injured during the pursuit and there is no other unit available to render assistance*
- there is a sustained loss of contact between the primary and/or secondary units with Comms, or the units fail to provide critical information to Comms in a timely manner*
- when the siren and/or warning lights fail to operate*
- any of the risk assessment criteria conditions change, such as an increase in traffic volumes or weather or road conditions, that mean the risks of continuing with the pursuit outweighs the need for immediate apprehension of the fleeing driver."*

## THE AUTHORITY'S FINDINGS

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### Issue 1: Was Officer A justified in commencing a pursuit of the Mitsubishi?

80. Officer A was aware that the occupants of a white Mitsubishi had been seen stealing a radar detector from another car.
81. When Officer A saw the vehicle on Oriental Parade, eight minutes later, he was justified under section 114 of the Land Transport Act 1998 and section 9 of the Search and Surveillance Act 2012 in signalling the driver of the Mitsubishi to stop (see paragraph 9).
82. Officer A did not recognise the driver of the Mitsubishi, nor any of its passengers.
83. Officer A was entitled to initiate a pursuit of the Mitsubishi when its driver failed to comply with his direction to stop.

## FINDING

Officer A was justified in commencing a pursuit of the Mitsubishi when its driver failed to stop after being signalled to do so.

### Issue 2: Should the pursuit have been abandoned when the Mitsubishi drove the wrong way along Cable Street?

84. As outlined in paragraphs 16-22, Officer A followed the Mitsubishi the wrong way along Cable Street for a distance of about 200 metres.
85. All traffic on Cable Street, between the intersections of Tory Street and Taranaki Street, was stationary during this phase of the pursuit. Officer A did not see any vehicle intending to turn right into Cable Street and therefore considered it safe to continue the relatively short distance to the Taranaki Street intersection.
86. The Authority has calculated that both the driver of the Mitsubishi and Officer A attained an average speed of about 25kph during this phase.
87. As detailed in paragraph 7, Officer A did not recognise the driver of the Mitsubishi or its occupants and was aware that a series of similar thefts had occurred in the Wellington area. In his view there were no other reasonable enquiries that could have been completed by Police at the time of the pursuit to: identify the driver of the Mitsubishi; recover stolen property; or potentially address the spate of thefts.
88. As detailed in paragraph 19, the dispatcher did not realise that Officer A had pursued the Mitsubishi the wrong way along Cable Street until after the pursuit had been concluded.
89. The pursuit controller assumed oversight of the pursuit at about the time the Mitsubishi and Officer A reached Cable Street. He was aware that both Officer A the driver of the Mitsubishi were heading the wrong way on Cable Street but not that they had to negotiate stationary traffic until Officer A transmitted: *“Traffic stationary but I’ve had to go slowly through it to avoid a crash”* about 17 seconds later (see paragraph 18).
90. The pursuit controller had a relatively short space of time to assess the pursuit and determine whether abandonment was necessary as the driver of the Mitsubishi and Officer A approached the intersection of Taranaki Street. He correctly identified that there was an element of risk in Police pursuing the Mitsubishi the wrong way along Cable Street but also considered other relevant factors before deciding that it was relatively safe for the pursuit to continue (see paragraph 21)<sup>11</sup>.

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<sup>11</sup> Police fleeing driver policy has been updated since this incident. All pursuits where the fleeing driver crosses into the opposing lane or drives against the flow of traffic must now be abandoned.

## FINDINGS

Both Officer A and the pursuit controller conducted a risk assessment when the driver of the Mitsubishi entered Cable Street in the wrong direction.

The Authority is of the view that, on balance, the risks involved in continuing to pursue the Mitsubishi did not outweigh the need to immediately apprehend its occupants. Therefore, both the pursuit controller and Officer A were justified in letting it continue.

### Issue 3: Should Officer A have abandoned the pursuit when it became apparent that the Mitsubishi had accessed the waterfront via Taranaki Street?

91. Neither the pursuit controller nor the dispatcher was aware that the waterfront was accessible to the Mitsubishi (see paragraphs 25-27) and Officer A did not immediately confirm his location when asked to do so by the dispatcher (see paragraph 24).
92. Both the pursuit controller and dispatcher believed that the pursuit had ended shortly after the Mitsubishi turned right into Taranaki Street. They assumed that its occupants were running from the vehicle, and that Officer A was following them on foot.
93. Officer A provided no information to CentComms that would have helped the pursuit controller assess the level of risk associated with the pursuit as it continued. The pursuit controller told the Authority that, had he known the pursuit was ongoing: *"I would've abandoned it immediately...it was in the middle of the afternoon...Friday afternoon's busy on the waterfront...no way would I expect a vehicle to be chasing along the waterfront."*
94. During court proceedings hearing the charge of dangerous driving against Officer A, the Court was told that, after entering the waterfront area, Officer A pursued the Mitsubishi at an average speed of 39kph. This was presented as the professional opinion of a Police crash investigator<sup>12</sup>.
95. The Authority acknowledges that Police had to satisfy the criminal standard of proof (beyond reasonable doubt) during the prosecution of Officer A and a speed of 39kph was the minimum speed that could be established to that standard.
96. However, on the balance of probabilities the Authority is satisfied that Officer A's first transmission occurred as he was turning right into Taranaki Street (see paragraph 23 and footnote 6). His second transmission 24 seconds later suggests that he was by the TSB Bank Arena (see paragraph 54)<sup>13</sup>. Assuming Officer A was near the bollards between Frank Kitts Park and the TSB Bank Arena at this time, he travelled a total distance of at least 399 metres. Based

<sup>12</sup> A brief half-page report completed by a crash investigator and examined by the Authority does not go beyond confirming that 39kph is the correct average speed based on revised information provided by Officer A during a second interview with a Police investigator. Officer A's comments regarding his location when making the radio transmissions referred to in paragraphs 23 and 54 are not tested.

<sup>13</sup> Officer A's proximity to the Mitsubishi as it passed Frank Kitts Park was mentioned by Ms U (see paragraphs 50 and 51) and Mr T (see paragraphs 52 and 53) in interviews with the Authority.

on this distance and the time between his radio transmissions, Officer A's average speed was 59.85kph as he pursued the Mitsubishi along the waterfront.

97. In stating the above, the Authority accepts that it is not in a position to establish Officer A's exact position at the time he made the second transmission as the pursuit was a moving event.
98. It is therefore possible that Officer A's vehicle had travelled up to halfway between the end of the footbridge and the end of Frank Kitts Park by the time his second transmission was made (see footnote 9). If this was the case, on the information available, a distance of at least 318 metres would have been covered by him in the 24 seconds between transmissions and his average speed would have been 47.7kph.
99. The Authority is therefore satisfied that the range of 47.7kph–59.85kph is a more accurate estimate of Officer A's average speed along the waterfront. This range is also consistent with what witnesses told the Authority during its investigation.
100. Despite following the Mitsubishi at what the Authority believes to be an average speed of between 47.7kph–59.85kph in a predominantly pedestrian area on a sunny Friday afternoon, Officer A told the Authority that, in his opinion, his continued presence behind the Mitsubishi had no effect on the fleeing driver's standard of driving. He also said that he thought his siren alerted members of the public to the potential danger.
101. However, based on the witness accounts contained within this report, the Authority is of the view that Officer A's decision to follow the Mitsubishi onto the waterfront caused its driver to continue at speed in order to avoid capture, thereby exposing pedestrians to increased levels of risk. Officer A should have recognised that members of the public would be exposed to unnecessary risk if the pursuit continued towards the waterfront area and should have abandoned the pursuit immediately.
102. Officer A told the Authority that, other than reducing his speed and increasing the gap between his Police car and the Mitsubishi, he did not consider taking another route to intercept the Mitsubishi as a viable alternative to following it along the waterfront. He was of the view that the Mitsubishi or its occupants would be lost in the time it would take him to reach the TSB Bank Arena via an alternative route.
103. However, despite Officer A's knowledge of "*other Police units around in the area because we'd all gone out to look for [the Mitsubishi]*" (see paragraph 7), there was no attempt by him to coordinate these units to prevent the Mitsubishi or its occupants escaping.
104. It is clear to the Authority that the already very high risks to the public increased significantly as the pursuit continued along the waterfront towards the TSB Bank Arena. It is unacceptable that members of the public had to jump out of the way and climb over bridges to escape harm.
105. While it is acknowledged that Officer A's lights and siren played a role in alerting members of the public to the incident (see paragraphs 34 and 45), the Authority is of the view that Officer A's decision to pursue the Mitsubishi, as well as his manner of driving, still put the public at unjustified risk. Officer A should have slowed completely or come to a stop to mitigate this

risk. He should also have recognised that other options were available to apprehend the occupants of the Mitsubishi.

## FINDINGS

Officer A should have abandoned the pursuit as soon as it became apparent that the driver of the Mitsubishi was able to access the waterfront area.

Officer A was not justified in continuing to pursue the Mitsubishi along the waterfront. His actions in doing so exposed members of the public to unjustified risk.

### **Issue 4: Were the pursuit controller and dispatcher given sufficient information to appropriately manage the pursuit?**

106. This pursuit lasted about 76 seconds, from the time Officer A told CentComms that the Mitsubishi was failing to stop to the time a second Police unit saw two people running away at the TSB Bank Arena (see paragraph 57).
107. As far as the pursuit controller and dispatcher were aware, the pursuit lasted no more than about 38 seconds, concluding when Officer A's Police car and the Mitsubishi reached the car park by the dive platform (see paragraphs 25-26).
108. As detailed in paragraphs 16-23, sufficient information was provided by Officer A for the pursuit controller to complete a risk assessment and determine whether the pursuit should continue along Cable Street (see also paragraphs 84-90).
109. However, CentComms received no radio transmissions from Officer A as he pursued the Mitsubishi along the waterfront, despite the dispatcher asking him to confirm his location (see paragraphs 24 and 54). The pursuit controller therefore remained of the view that the occupants of the Mitsubishi were on foot and Officer A was running after them.
110. As detailed in paragraph 93, the pursuit controller told the Authority that he would have immediately abandoned the pursuit had he known it had continued onto the waterfront.
111. During court proceedings arising from Officer A being charged with dangerous driving, the Court was told by the defence that Officer A was under the control of CentComms throughout the pursuit, that he complied with fleeing driver policy, and that Police communications staff were constantly aware of his situation. This does not accord with the facts established by the Authority.
112. According to Police fleeing driver policy in force at the time of this incident, Officer A, as the 'Primary Unit Driver', had the "*primary responsibility for the initiation...continuation and conduct of [the] pursuit.*" He therefore had a positive duty to manage and control the pursuit as it progressed, as opposed to remaining passive and relying solely on directions from CentComms.

113. As detailed in paragraph 24 and contrary to Police fleeing driver policy in force at the time of this incident, Officer A did not clarify his location with CentComms when asked to do so. Officer A also gave no commentary while pursuing the Mitsubishi along the waterfront. In the absence of any update the pursuit controller reasonably assumed that the pursuit had concluded (see paragraph 26).

## FINDINGS

The pursuit controller and dispatcher were given sufficient information by Officer A during the early stages of the pursuit.

However, the lack of any communications by Officer A while he was pursuing on the waterfront meant that the pursuit controller had insufficient information to manage the incident, and no knowledge of how the pursuit had progressed or of the significant risks involved.

## CONCLUSIONS

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114. Officer A was justified in commencing a pursuit of the Mitsubishi.
115. Both Officer A and the pursuit controller considered relevant risk factors when the pursuit entered Cable Street and continued towards Taranaki Street.
116. The Authority is satisfied that, in the circumstances, the risks involved in allowing the pursuit to continue along Cable Street did not outweigh the need to immediately apprehend the Mitsubishi's occupants.
117. However, this delicate balance changed significantly when the Mitsubishi reached the waterfront.
118. Officer A should have recognised that the shift to a predominantly pedestrian area would have exposed many members of the public to unnecessary and unjustified risk.
119. Officer A should therefore have abandoned the pursuit as soon as he saw the Mitsubishi access the waterfront. His failure to do this, as well as provide updates to CentComms, was unjustified.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

17 May 2017

**IPCA: 15-1948**



## ABOUT THE AUTHORITY

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### Who 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 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 employs highly experienced staff who have worked in a range of law enforcement and related 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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.



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