



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihimana Motuhake

Fatal shooting of Jerrim Toms

November 2019

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Introduction

1. In the early hours of Saturday 31 March 2018, Police encountered a man, now known to be Jerrim Toms, wielding a machete on a quiet motorway near Wellsford.
2. Over the next hour, various Police officers interacted with Mr Toms. A pursuit took place, during which his car tyres were spiked on three occasions. The interaction culminated in Police shooting Mr Toms, fatally wounding him. Mr Toms died at the scene.
3. Police notified the Independent Police Conduct Authority (the 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

4. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.

SUMMARY OF EVENTS

111 call

5. At 2.51am on Saturday 31 March 2018, Mr Toms' mother, Ms Y, called 111 to ask Police to carry out a welfare check on her son. She said Mr Toms was "really agitated" and had made her leave her home. She told the 111 call taker she had called the mental health crisis team, who advised her to call Police.
6. The call taker established that:
 - Ms Y believed her son had a large bayonet-like knife, about 10-11 inches in length, strapped to his hip;
 - Mr Toms had threatened to burn the house down;
 - he may have taken "P" earlier in the day;¹ and
 - Mr Toms was about six feet tall, Pākehā, with short hair.
7. The call taker also obtained the registration number of Mr Toms' white Subaru car, and his and Ms Y's cell phone numbers. The call taker entered this information into an 'event' in the Police CARD system.²
8. An officer arrived at Ms Y's address at about 3.10am. He did not find anyone at the house and saw the white Subaru was not there either. The officer updated the task on his mobility device with the code "K1", to show that no further action was required.³ He noted:

"MALE NOT AT ADDRESS, PRESUMABLY LEFT IN WHITE LEGACY. INFORMANT CALLED, WILL STAY AT DAUGHTER'S FOR THE NIGHT. WILL CHECK HER ADDRESS

¹"P" is a common term for methamphetamine, a stimulant drug which causes the central nervous system to release a large amount of dopamine. The post-mortem examination of Mr Toms found that there was methamphetamine and cannabis in Mr Toms' blood.

² This stands for Communications and Resources Deployment System. It is an electronic Police system used in Police Communications centres. 'Events' are created where there is a need to dispatch resources and manage incidents.

³ A mobility device is either an iPad or an iPhone that officers carry in their vehicles or on their person and can use to access Police databases.

IN THE MORNING WITH SON IN LAW TO ENSURE HE IS NOT HOME. IF HE IS SHE WILL CALL US”.

9. When the officer entered ‘K1’ on his mobility device, this caused the ‘event’ to disappear from the CARD screen viewed by the dispatcher. There was no alert entered into the Police system, or radio broadcast made regarding the white Subaru or Mr Toms. The officer was immediately assigned to another task.

Police’s first interaction with Mr Toms

10. After 3am, Officer A was driving on State Highway 1 in a marked Police patrol car when he noticed a white Subaru on the roadside, partially obstructing the lane.⁴ The car had its headlights off, but its hazard lights on.
11. Officer A slowed and moved over to stop behind the Subaru. As he did this, the Subaru moved forward about 10 or 20 metres, then stopped again. Officer A pulled alongside the car, then activated his red and blue flashing lights. He wound down the passenger window and saw a man in the driver’s seat of the Subaru. Later, it was established that the man was Mr Toms, who was alone in the car.⁵
12. Officer A later described Mr Toms as being “wild-eyed”. He said Mr Toms demanded that Officer A tell him who he was, yelling at him to give his name and badge number. Mr Toms got out of the Subaru, with what appeared to be a machete in his hand. He hit the road with the machete. Mr Toms then walked towards the front of Officer A’s patrol car.



1: Photograph of the machete used by Mr Toms.

⁴ Shown as ‘i’ on the map at Appendix A.

⁵ Mr Toms’ identity was not confirmed until after his death. The officers involved did not know that Mr Toms was the man in question at the time of these events, however, for the purposes of this report, we will refer to Mr Toms by name throughout.

13. As Mr Toms walked to the driver's side of the patrol car, he reached out in a manner that made Officer A think he was going to pull open the door, which was already ajar. Officer A quickly closed the door and reversed about five to ten metres. Mr Toms continued walking towards the patrol car, so Officer A reversed further until he was about 40 metres from Mr Toms.
14. At 3.23am, Officer A radioed the Police Northern Communications Centre (NorthComms) and requested back-up. In response to a general request for back-up:
 - Officer E, the shift supervisor for the Rodney area, advised NorthComms he would go and assist Officer A.
 - Officers B and C (who were together in a patrol car) also advised they were on the way.⁶
 - Officer K, a North Shore supervisor, arranged over the radio for his staff to provide cover for the Orewa area, so that the Orewa officers could travel further north to assist Officer A.
 - Officer D, a dog handler, requested that NorthComms assign him to the incident.

NorthComms

15. The NorthComms Shift Commander took control of the incident ensuring that the Police helicopter (Eagle), a dog handler, and other Police officers were on their way to assist Officer A.⁷

Officer A arms himself

16. Meanwhile, Officer A was concerned by Mr Toms' demeanour and the threatening way in which he was waving the machete. Therefore, he armed himself with a Glock pistol from the gun safe in the front of his patrol car. Officer A did not put on his ballistic body armour or advise NorthComms that he had armed himself.⁸
17. A member of the public drove up to assist, and in sending them away, Officer A drove in front of Mr Toms.

Following Mr Toms

18. Officer A's patrol car was then about five to ten metres in front of the Subaru. Mr Toms got back into the Subaru, and Officer A was concerned that Mr Toms might ram his patrol car, so he drove slowly down the road travelling north. Mr Toms followed him for about 50 to 100 metres. Officer

⁶ Officer B had nine years' service with New Zealand Police. Officer C graduated from Police College a few months prior to this event.

⁷On 31 March, Eagle carried a civilian pilot and two Police officers. The officer in the back seat provided information to the officer travelling in the front seat. The front officer relayed information via the Police radio. References to 'Eagle' in this report therefore refer to what the front passenger said or did.

⁸ Police policy requires officers to wear ballistic body armour – in this case, hard armour plating (HAP) over their standard issue Stab Resistant Body Armour (SRBA) – which provides additional protection of vital organs during incidents involving firearms.

A then sped up and did a U-turn. As he did this, he saw Mr Toms standing in the middle of the road ahead, waving the machete.

19. Officer A was worried that Mr Toms was in danger from oncoming northbound traffic. He therefore drove past Mr Toms, completed another U-turn, and parked behind the Subaru in the northbound lane, activating his patrol car's red and blue flashing lights to warn oncoming traffic. Mr Toms returned to his car and began slowly driving north again, with no lights on. Officer A followed him with his red and blue flashing lights on.
20. Officer A observed Mr Toms throwing what appeared to be rubbish out of his car window. He advised NorthComms of this and provided the Subaru's registration number. Mr Toms pulled over and stopped a short distance from where Officer A initially encountered him. Officer A told NorthComms: *"I can hear some whacking sounds coming from his car. I'm not too sure what he was doing."* Officer A later told Police that Mr Toms was hitting out his car's taillights with the machete.
21. Mr Toms continued driving and stopping. Officer A followed and continued to provide NorthComms with updates, including that the machete was still in the car.
22. At this stage, Mr Toms was travelling at about 50 kph, still with his lights off. NorthComms advised that the vehicle was registered to Mr Toms, who had active charges for failing to stop and dangerous driving. His criminal history showed only driving related offences. There were no other alerts about Mr Toms.
23. Mr Toms suddenly turned and drove quickly in the opposite direction. Officer A followed him southwards. Officer A later estimated the speed at this time to have been about 140 kph, in an area with a posted speed limit of 100 kph.
24. Officer E radioed to ask whether Police should initiate a pursuit.⁹ NorthComms directed that Police were not to initiate a pursuit at that stage, as they were trying to arrange for Eagle to attend and monitor the situation from above. NorthComms was unaware that Officer A had his patrol car's flashing lights activated as he followed the Subaru, and therefore was already engaged in a pursuit.
25. When adjacent to the intersection with Ross Road, Officer A advised NorthComms that he had lost sight of the Subaru due to its speed.
26. At this time, Officers F and L advised that they were en-route in separate patrol cars to assist. Officer F had taken his pistol from the gun safe of his patrol car and holstered it, but did not put on his ballistic body armour.

⁹ 'Pursuit' in this sense means a driver has been signalled to stop and fails to do so. Officers follow the fleeing driver in a Police car with lights and sirens activated.

27. Eagle advised they were on their way and queried whether road spikes would be set up in Warkworth and towards the tunnel at Puhoi.¹⁰
28. A member of the Joint Traffic Operations Centre (JTOC), which monitors CCTV cameras throughout the country, radioed shortly after to advise that a white Subaru had passed the Wellsford shops with its lights off. JTOC estimated the Subaru was travelling at at least 110 kph.
29. Officer A activated his patrol car's sirens as he approached Wellsford, because he was going through a township and was still travelling at speed. He did not advise NorthComms that he was driving with his car's red and blue flashing lights and sirens on.

Officers B and C see Mr Toms' car

30. While driving, Officer B instructed Officer C to remove their pistols from the front passenger gun safe, and to 'action' them so there was a bullet in the chamber of each gun, ready to be fired. Officer B referred to the Police 'fire orders', particularly noting that they were only to use their guns if they feared for their lives and had no other choice.¹¹ They did not stop the car to get their ballistic body armour from the boot.
31. Eagle asked over the radio if the NorthComms Shift Commander would give permission to use road spikes, or what the plan was for trying to stop Mr Toms' car.¹² NorthComms responded: "*Affirm. Permission to spike.*"

Officers B and C locate Mr Toms

32. A short time later, the Subaru, with its headlights off, drove past Officer B's and C's patrol car at speed, travelling in the opposite direction. Officer B made a U-turn, activated the patrol car's red and blue flashing lights and sirens, and began to follow the Subaru.
33. Officer B advised NorthComms that he was trying to catch up and requested permission to pursue the Subaru. This was declined. NorthComms instead told Officer B to "*maintain observations behind the vehicle*". Officer B therefore turned off the patrol car's red and blue flashing lights and sirens, but continued following the Subaru. Officer B drove at about 150 kph to try to keep Mr Toms' vehicle in sight. He advised NorthComms of this. At the time there were no other vehicles on the road, it was dark and there was no road lighting, but the weather was

¹⁰ Tyre deflation devices, commonly known as road spikes, are an approved Police tool used by officers. They are essentially an extendable cord with spikes embedded at regular intervals along its length. These spikes are used to deflate tyres. See paragraphs 229 to 233 for Police policy on Tyre Deflation Devices.

¹¹ 'Fire orders' are instructions which set out the circumstances under which Police may use firearms. See paragraphs 251 to 257 for the Police policy.

¹² Police policy requires that usually, before an officer deploys road spikes, they receive permission to do so from the Communications Centre, who would be overseeing the incident.

clear. The Subaru's headlights remained off, but Officers B and C could occasionally see the Subaru's brake lights in the distance.

34. Officer F requested and received permission from NorthComms to deploy road spikes. Officer E also advised NorthComms that he had set up road spikes at Kaipara Flats Road.

First spiking

35. Officer F advised NorthComms that he had road spikes set up at the intersection between Christine Place and State Highway 1.¹³
36. Eagle had just arrived and queried whether there was a team ready to do a 'high-risk vehicle stop' if the Subaru was successfully stopped by the road spikes.¹⁴ Officer C, who had taken over commentary from Officer B, responded that they had "*guns ready*".
37. Officer C advised that they had lost sight of the Subaru.
38. Eagle advised Officer F that the Subaru was coming towards him, about a kilometre away, travelling "*at high speed*".
39. At about 3.50am, Mr Toms drove over the road spikes at the Christine Place intersection and continued travelling south on State Highway 1. Officer F, who estimated Mr Toms was travelling at about 140 kph, retrieved the spikes from the road and, a little while later, saw one or two patrol cars following the Subaru.

Second spiking

40. Officer E set up road spikes at the intersection of Kaipara Flats Road and State Highway 1.¹⁵ Mr Toms drove over them. Officer E believed there were three patrol cars following the Subaru at this time, and none of them had their flashing red and blue lights and sirens on. The patrol cars were still a considerable distance behind Mr Toms at this time, with Officers B and C in the lead vehicle.
41. Officer E radioed that the spiking had been successful, and Eagle advised: "*...they've got him spiked, so we're gonna have to close units up now towards Warkworth in case he stops and gets out.*" NorthComms acknowledged this.
42. Officer E joined the convoy trying to catch up with Officers B and C, and the Subaru, and that Mr Toms' speed varied from 30 kph to 100 kph.

¹³ Shown as 'ii' on the map at Appendix A.

¹⁴ A high-risk vehicle stop is also known as an "*armed 3T*" or an "*armed vehicle stop*". Officers approach a vehicle with their firearms presented while appealing to the people inside the vehicle. Discussed below at paragraphs 199-207.

¹⁵ Shown at approximately 'iii' on the map at Appendix A.

Mr Toms attempts to get into a patrol car

43. Officers B and C gained on the Subaru considerably. Eagle told them to continue following the Subaru with their red and blue flashing lights and sirens off.
44. Eagle continued to provide commentary on Mr Toms' manner of driving and speed, which was up to 150 kph in a 100 kph area. Eagle advised that the Subaru's tyres were heating up and "*losing rubber*". The Subaru began to slow down and swerve across the road. It still had its lights off.
45. At about 3.52am, Mr Toms stopped the Subaru, partially blocking the road.¹⁶ Officer B parked the patrol car about ten metres behind the Subaru.¹⁷ Officer B did not have time to holster his pistol, so he held it in his lap.
46. Mr Toms ran towards Officers B and C, holding a machete and waving his arms. Officer B later described the machete as having a blade approximately 50-60cm long.¹⁸ Mr Toms ran to the patrol car's front passenger door and hit the window with the machete. Officer C, who was in the front passenger seat, later said Mr Toms had a "*real look of aggression*" on his face and he believed Mr Toms had intended to kill him. Officer B later told Police that he thought if the window had been down, Officer C would have been killed.
47. Officer B quickly reversed the patrol car away then opened his car door to get out. However, at that point Mr Toms got back into the Subaru and recommenced driving. The two officers continued following Mr Toms. Neither of them advised NorthComms that Mr Toms had hit the patrol car with the machete.
48. Although Eagle was overhead at this time, its view was obscured by trees, and therefore the officers onboard could not see and did not comment on the confrontation between Mr Toms and Officers B and C.

Police continue to follow Mr Toms

49. The Subaru lost a tyre, which began rolling down the road. Eagle warned Police following Mr Toms to "*back off*" and advised NorthComms that they should try to set up road blocks to stop all traffic heading north. NorthComms acknowledged this and told Officer K to stop northbound traffic. Officer K was parked near the Silverdale off-ramp.
50. Officers B and C continued following the Subaru. They were travelling within the speed limit and did not have their red and blue flashing lights or sirens on. Traffic was light, and several trucks passed by in the opposite direction. The Subaru was travelling at about 20-30 kph, so they caught

¹⁶ At approximately 'iv' on the map at Appendix A.

¹⁷ Officer B later explained that he left this amount of space as he was aware that Mr Toms had a machete.

¹⁸ Police later took the machete as an exhibit. The machete is approximately 42cm long, with a blade approximately 26cm long. Refer to the photograph in paragraph 12.

up with it again. The Subaru then sped up, and Officer B slowed his patrol car down to move back out of sight.

Officers D and F follow Mr Toms

51. Officer D,¹⁹ a dog handler armed with a pistol, pulled in behind the second patrol car following the Subaru.²⁰ At 3.55am, Officer D radioed that he was behind the other patrol cars. They *“continued shadowing the offending vehicle while getting a commentary via Eagle....”*
52. After putting away his road spikes, Officer F travelled south to Warkworth at speed with his patrol car’s red and blue flashing lights on, while listening to Eagle’s commentary. At Toovey Road, he turned off the flashing lights. Officer F saw the Subaru again, and told the Authority he was the fourth in a queue of Police cars at a distance behind Mr Toms. None of the Police cars following the Subaru had their red and blue flashing lights or sirens on.
53. Eagle commented that Police might need to spike the Subaru a third time, and gave ongoing updates over the radio about the Subaru’s speed and direction of travel. At approximately 3.57am, Eagle advised that Mr Toms appeared to have lost control of the car and had gone into a ditch.²¹ Mr Toms then manoeuvred the car out of the ditch and continued driving. Eagle advised that Mr Toms had *“no control whatsoever, he’s lost another tyre”*. The Subaru’s speed then increased, and Eagle advised Police to *“drop back out of sight again”*. Eagle advised NorthComms that *“our staff are about 800 [metres] out of sight”*. Mr Toms briefly turned his headlights on, but later turned them off again. Eagle advised that *“our staff have closed back up the gap”*.

Third spiking

54. Meanwhile, Officers G and H were approximately five kilometres north of the Puhoi Tunnel. Officer G deployed road spikes across State Highway 1.²² He withdrew to a safe location, with clear visibility to observe the Subaru travelling towards them.
55. Officers G and H directed traffic travelling north into a side road. They also armed themselves with their pistols.
56. The Subaru was spiked for a third time, moments before Eagle stated that *“...it looks like three Police cars in behind [the Subaru], if not more further back...”*. Officers B and C were still in the lead vehicle.

¹⁹ When Officer D heard over the radio that Mr Toms was travelling south, in his direction, he pulled over at approximately point ‘v’ on the map at Appendix A and armed himself with his pistol before continuing.

²⁰ It is not clear who was in the patrol car immediately behind Officers B and C at this time. It seems likely this was Officer A.

²¹ Shown as ‘vi’ on the map at Appendix A.

²² Shown as ‘vii’ on the map at Appendix A.

Mr Toms stops the Subaru

57. While following Mr Toms, Officers B and C discussed the possibility they would need to use their pistols to protect themselves. Officer B told Officer C that if Mr Toms “*charged*” at the driver’s side of the vehicle, he would stay in the car and Officer C would get out and “*use ... firearms to protect ourselves and others*”, using the car as a shield. If Mr Toms came at Officer C’s side of the vehicle, Officer B would get out and do the same, while Officer C stayed in the car.
58. At about 4.02am, Officers B and C caught up with the Subaru as it came to a stop on State Highway 1, about a kilometre north of the Johnstones Hill Tunnel. Officer B stopped the patrol car behind the Subaru.²³
59. The other patrol cars following the Subaru stopped immediately after Officer B’s patrol car came to a halt. Officer I, who had joined the units following the Subaru straight after Mr Toms had confronted Officers B and C, parked in the right-hand lane, almost level with the back of Officer B’s patrol car.²⁴ Officer A pulled into the left-hand lane a short distance back from Officer I’s car. Officer D parked behind Officer A, and Officer E parked at the rear. Officer J, who had joined the queue of Police vehicles shortly before the Subaru was spiked for the third time, pulled his car to the right of Officer I, and Officer F parked behind Officer J.
60. Officer B later said he knew there were cars behind him at the time he began braking behind Mr Toms’ car, but he was not sure if they were patrol cars or civilian cars.
61. Mr Toms got out of the Subaru, with the machete in his right hand, and walked towards Officer B’s side of the patrol car. Officer J got out of his car at the same time as Mr Toms. As Officers B and C were getting out of their patrol car, it continued rolling forward. Officer C ducked back inside the car and put the handbrake on, bringing the patrol car to a stop 7.8 metres behind the Subaru. Officer B actioned his gun a second time as he was getting out of the patrol car, causing a second round to jam in the gun’s chamber.²⁵ Officer B then actioned his gun another few times to clear the jam. Officers B and C both positioned themselves to be shielded by their respective car doors, with their guns raised and pointed at Mr Toms.
62. Officer B yelled at Mr Toms to stop. He did not respond, and Officer B later said Mr Toms continued to walk “*purposefully*” towards the driver’s side of the patrol car, swinging the machete at his side as he walked.
63. Meanwhile, Officer D got out of his Police dog van, ran to the back of it and retrieved his dog. Officer E ran towards Mr Toms, releasing the catch on his gun’s holster as he ran, but leaving the gun holstered. Officer I got out of his car and pointed his rifle at Mr Toms. He heard Officer B yelling “*stop, armed Police!*”, or words to that effect. He saw Mr Toms continue walking towards Officer B.

²³ Shown as ‘viii’ on the map at Appendix A.

²⁴ Officer I is a Police supervisor. While en-route to assist, Officer I stopped his car and armed himself with his Bushmaster M4 rifle.

²⁵ Officer C had already actioned the pistol for him: see paragraph 30.

Officers B and C shoot at Mr Toms

64. Again, Officer B yelled at Mr Toms to stop. However, he continued moving towards Officer B, with the machete in his hand moving back and forth in time with his stride.
65. Officer B recalled that he also yelled for Mr Toms to drop the machete and get on the ground, but Mr Toms continued walking towards him. Officer B said he:

“... immediately knew that he was going to try and kill me by the way that he was walking with his machete... there’s no way that he wouldn’t hear my calls, I was screaming and shouting at him ... but he continued to walk as if he’s going to kill me.”

66. Officer B said he was “almost pleading” with Mr Toms to stop. Officer B explained that at that stage, he considered shooting Mr Toms to be the only valid tactical option available to him:

“It was clear to me that [pepper] spray and Taser would be inappropriate if the male again charged us because such options are ineffective against a goal driven individual rapidly approaching an officer.”

67. Officer C also believed Mr Toms intended to use the machete:

“...and the fact that he used it on the Police vehicle earlier showed he would have no hesitation in harming a person with the machete...”

My [risk] assessment was that the man was actively assaultive.²⁶ This was evident due to the male refusing to stop after being warned and continu[ing] to approach [Officer B] with the machete.”

68. As Mr Toms continued to advance towards Officer B, Officers B and C both fired at him. Officer B fired five shots and Officer C fired seven shots. These shots were fired over a period of about four seconds. Four of the shots fired hit Mr Toms.
69. The following paragraphs set out the sequence of events during which these shots were fired, as established from the officers’ recollection of the incident and analysis of the Eagle footage.

Mr Toms advances on Officer B

70. When Mr Toms advanced, Officer B “screamed” at him to stop, to drop his weapon, and to get on the ground. When Mr Toms approached to within two metres of Officer B, the officer fired his pistol twice in close succession (shots 1 and 3). These two bullets hit Mr Toms in the chest causing fatal injuries.
71. Officer C later said Mr Toms was “moving towards [Officer B] with purpose”. He believed Mr Toms “posed an immediate threat to Officer B, in particular given the close proximity of the male

²⁶ ‘TENR’ (Threat-Exposure-Necessity-Response) is a Police threat assessment methodology that supports the timely and accurate assessment of information directly relevant to the safety of Police and others. The response to any given situation must be considered, timely, proportionate and appropriate. The overriding principle when applying TENR is that of “safety is success”. According to Police policy, ‘assaultive’ includes someone who displays intent to cause harm, through body language/physical action.

... holding a machete which he had already used to attack the Police vehicle.” Officer C further explained that he “had to act immediately to ensure the threat was eliminated otherwise there was a real possibility that either Officer B or myself could have suffered [grievous bodily harm] or death.” Eagle footage shows Officer C firing two shots (shots 2 and 4), with his first shot punctuating Officer B’s shots.

72. Shots 1-4 were fired in under a second, while Mr Toms was approximately 1.5 metres from Officer B.
73. Officer A told the Authority that, at the time shots 1-4 were fired, he was removing his pistol from its holster and heard a series of “pops”. Eagle footage shows Officer A, with his pistol drawn, about five metres behind Officer B and advancing towards Mr Toms at the time the first shot was discharged.
74. Officer F was also out of his patrol car when the first shots were fired, and Officer E was running from his vehicle towards Mr Toms.

Mr Toms turns and runs away

75. Mr Toms turned and began running away immediately after shot 4 was fired by Officer C. He was still holding the machete in his right hand and Officer C thought none of the shots fired up to this point had hit him.
76. Officer B fired again (shot 5) as he began slowly advancing towards Mr Toms, who was still holding the machete and was now about 4.5 metres ahead of Officer B. Officer B believed Mr Toms was still “an imminent threat to me or anyone else that may have been around”. Officer C also fired at Mr Toms at about this time (shot 6).
77. Officer B continued advancing towards Mr Toms and fired shot 7, as Mr Toms continued running diagonally towards the northbound carriageway with the machete in his hand. Mr Toms was about six metres away when shot 7 was fired.
78. Officer C fired shot 8 when Mr Toms was about seven metres from Officer B. Officer B fired shot 9 when Mr Toms was 7.5 metres away. This was immediately followed by shot 10, fired by Officer C.

Mr Toms drops the machete

79. It is likely Mr Toms sustained a gunshot wound to his right forearm as a result of shot 10. This may have caused him to drop the machete as he reached the northbound carriageway. When he dropped the machete, Mr Toms was about 11.5 metres from where he had been standing when Officer B first opened fire. He continued to run diagonally towards the far side of the road.
80. Officer B kept his gun trained on Mr Toms but did not fire again. He was aware that Mr Toms had dropped the machete, and therefore thought Mr Toms “was no longer an imminent threat”. He followed Mr Toms and continued to yell at him to stop and show him his hands.

81. Officer B later said it was not until Mr Toms had dropped the machete that he realised other Police officers were in the immediate vicinity. At this point he noticed Officer D behind him and to his right.
82. Officer C fired two more shots (shots 11 and 12) after Mr Toms had dropped the machete. Mr Toms continued running for a short distance, before collapsing on the far side of the northbound carriageway.
83. It was later established that a bullet from Officer B's gun hit Mr Toms in the back. It has not been possible to determine which shot, excluding the first two shots fired by him, caused this injury.

Post-shooting actions

Aftercare

84. Officer D considered releasing the Police dog to catch Mr Toms, but saw him fall over at the side of the road. Mr Toms had covered a total distance of about 45 metres following the discharge of shot 4, and several officers were running towards him.
85. Eagle footage shows Mr Toms fall to the ground and roll slightly onto his side. Seven officers can be seen running over to him. Officer A handcuffed Mr Toms, while Officers B and C stood close by with their guns aimed at him. Officer I then searched Mr Toms to ensure he did not have any other weapons. During this search, Officer I realised Mr Toms had been shot. Mr Toms was moved into the recovery position, and an officer retrieved a first aid kit from their patrol car. Officer I asked NorthComms to send an ambulance.
86. Officers A and E applied first aid to Mr Toms. Officer I noticed that Mr Toms had been shot in the chest more than once, but was still breathing. Officer I asked another officer to get the defibrillator from their car. Soon after this, Officer I noticed that Mr Toms had stopped breathing and did not have a pulse. He therefore had Mr Toms' handcuffs removed and applied cardiopulmonary resuscitation (CPR) compressions.
87. Officer E cut open Mr Toms' shirt and placed the defibrillator pads on his chest. The machine showed the instruction "*no shock*". At 4.14am, ambulance staff arrived and began checking Mr Toms and attaching monitors to him. The ambulance supervisor determined that Mr Toms had died. The ambulance staff removed their equipment and left the scene.
88. Officers G and H arrived at the scene shortly after the shooting. They assisted in cordoning off the area. The road was closed for a number of hours while the scene was examined. This road closure will be the subject of a separate analysis by the Authority.

Alcohol and drug testing

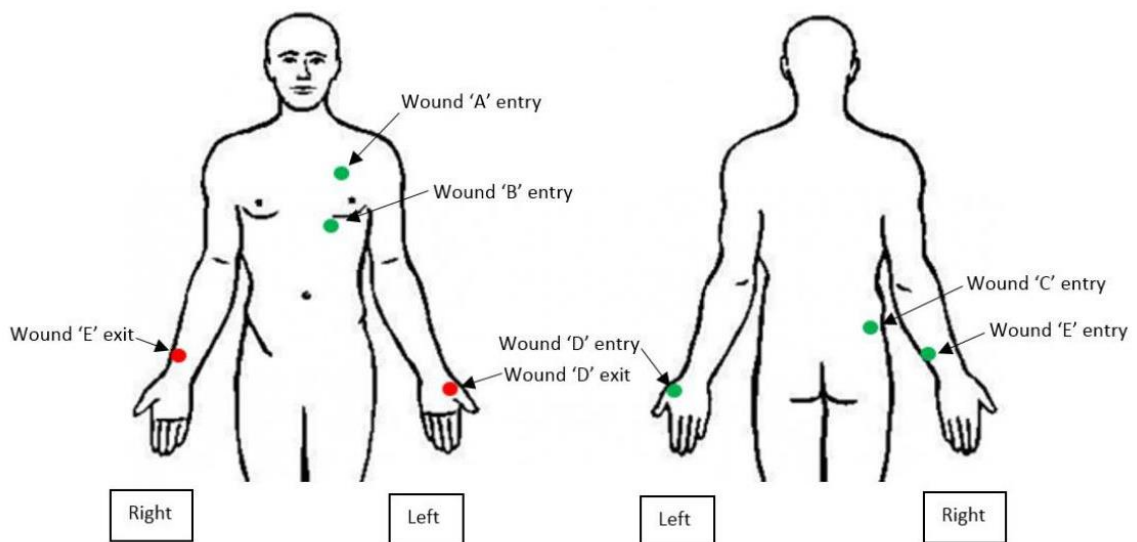
89. Police tested all the officers for alcohol and drugs, and the results were clear.

Post-mortem forensic pathologist report

90. The forensic analysis of Mr Toms' body concluded that there were five gunshot wounds to Mr Toms, which were each examined. These wounds were to the:

- Upper left chest (potential fatal injury).
- Lower left chest (potential fatal injury).
- Right lower back (potentially non-fatal injury).
- Right forearm (non-fatal).
- Left thumb (non-fatal).

91. The image below shows the location of the entry and exit bullet wounds sustained by Mr Toms.



92. The forensic analysis report concluded that the bullet which hit Mr Toms' left thumb went through his thumb (Wound D) and caused the injury to his lower left chest (Wound B). Therefore, the five wounds were the result of four shots which hit him.

93. The report found that the two gunshot wounds to the chest caused "*massive bleeding*" into the chest cavity, which led to Mr Toms' death. The report found that either of these wounds would have been fatal individually. The two shots to Mr Toms' chest entered his body from the front.

94. The pathologist who wrote the report stated that in his opinion:

"... it is certainly conceivable... for Mr Toms to sustain two fatal injuries to his chest yet still be able to turn around and run in the opposite direction for the distance that he did."

Critical Incident Investigation

95. Police conducted a Critical Incident Investigation into this matter to determine whether any criminal charges were appropriate. It determined that Officers B and C would have a defence of self-defence (under section 48 of the Crimes Act 1961) in respect of the shots which struck Mr Toms.

Policy, Practice, and Procedure review

96. A separate Police review looked at policy, practice, and procedure issues, to consider whether there were any broader lessons to be learned from this incident. This review considered the information and resources available to Police at the time they were interacting with Mr Toms, and the processes undertaken by them both during the incident and following the shooting (including a review of the actions of the NorthComms staff). The review found that:

- Criminal intelligence relating to Mr Toms was readily accessible to response staff at the time of the event on 31 March 2018.
- It was inappropriate for the officer who was directed to Mr Toms' address to enter a 'K1' on his mobility device (see paragraphs 8 and 9). The officer should have ensured Police in the area were aware that a distressed person with a knife appeared to be mobile.
- The pursuit and use of road spikes complied with policy, practice and procedure.
- There were enough Police officers available to respond to and manage the incident effectively.

Subsequent Police action

97. The Police reviews of the incident and this Authority report identify a number of policy breaches by various officers and areas for improvement. Police have advised that they are addressing these with the relevant officers by way of a lessons learned approach and appropriate training where applicable.

The Authority's Investigation

98. As required under section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Authority on 31 March 2018 of the incident resulting in Mr Toms' death. The Authority independently investigated the matter and:
- interviewed 22 members of Police;
 - visited the scene of the shooting;
 - examined Eagle footage of the incident;
 - reviewed documents generated as part of the Police investigation into this matter; and
 - sought additional information from Police in respect of matters arising during the course of the Authority's investigation.
99. The Authority identified and considered the following issues:
- 1) Did Police comply with policy when arming themselves?
 - 2) Were Officers B and C justified in shooting Mr Toms:
 - As he was advancing towards Officer B?
 - After Mr Toms turned and ran?
 - 3) Did Police ensure appropriate medical assistance was provided to Mr Toms?
 - 4) Did Police pursue Mr Toms? If so, did this comply with policy?
 - 5) Was the use of road spikes on three occasions appropriate and in accordance with policy?
 - 6) Was there clear and adequate communication, control and command of the situation?

The Authority's Findings

ISSUE 1: DID POLICE COMPLY WITH POLICY WHEN ARMING THEMSELVES?

100. Police are permitted to carry firearms when they assess there is a risk of death or grievous bodily harm. When arming themselves with a firearm, officers are required to notify the Communications Centre, carry a Taser, and remind themselves of the Police 'fire orders'.²⁷ Police policy also states: "*Employees **must** wear approved ballistic body armour when deploying to an incident where they believe firearms are present or could be present.*"

Arming

101. Officer B explained that when he and Officer C discussed arming themselves, he considered the range of tactical options available to them, including Taser. However, he was conscious that "*Tasers only have two cartridges, if you miss or one [probe] goes in and the other one does not it's not going to have any effect.*"²⁸ Officer B further explained his view that, as a machete is a potentially deadly weapon, a firearm was the appropriate option.

102. Officers A, B, C, D, E, F, G, and H all armed themselves with pistols, while Officer I armed himself with a rifle.

103. The Authority considers it was appropriate that Officer A and the officers travelling to assist him armed themselves with firearms, given that Police were aware Mr Toms had earlier brandished a machete.

104. None of the officers advised NorthComms at the time that they were arming themselves, although Officer C did later advise NorthComms that he and Officer B were armed.

105. All of those officers, except Officer D (the dog handler), were carrying a Taser with them at the time of the incident, as required by policy.

Ballistic body armour

106. When spoken to by the Authority, Officer I said he had put his ballistic body armour on. Officers G, H, and D all thought they had put their ballistic body armour on, but could not remember for certain. Officers A, B, C, E and F did not put their ballistic body armour on. Officer F later explained that he did not put on his ballistic body armour as he was concerned about it restricting his movements getting in and out of the patrol car. He said he would have put it on if he went to a Safe Forward Point (SFP).²⁹

107. The Authority accepts that Officer A did not have time to put on his ballistic body armour when he was arming himself, as Mr Toms was presenting an immediate threat. To get out of the car

²⁷ 'Fire orders' are an explanation of the circumstances under which Police may use firearms (see paragraphs 251-257 below).

²⁸ For a Taser to incapacitate someone, two probes need to connect with them.

²⁹ An SFP is a Police cordon set up in response to an armed incident, from which officers plan, coordinate, and move towards the armed person.

to remove the armour, stored in the boot of the car, would have placed Officer A in greater danger.

108. However, when they made the decision to arm, Officers B, C, E and F should have stopped their vehicles to remove the ballistic body armour from the boot and put it on. The Authority notes that Officers B and C had several opportunities to don their armour, including when they first went to assist Officer A, after their encounter with Mr Toms, and once Eagle was overhead providing commentary. When Officer A lost sight of Mr Toms, he also should have pulled over and put on his ballistic body armour.
109. The Authority considers that the officers following Mr Toms, or assisting nearby, all knew Mr Toms was armed with a machete and would have all heard Officer C advise that he and Officer B were arming themselves. Eagle had also suggested a high-risk vehicle stop (discussed in detail at paragraph 199 onwards), so all officers should have been aware that there would be firearms present at a stop involving Mr Toms, and that ballistic body armour was therefore necessary. As Eagle was overhead, even if the officers lost sight of Mr Toms, Eagle would still be able to advise them where he was so that they could coordinate and catch up to him again.

FINDINGS ON ISSUE 1

All field officers on the ground were justified in arming themselves.

Officers A, D, E, F, G, H, and I should have notified NorthComms that they were arming themselves, and breached Police policy by failing to do so.

Officers A, B, C, E and F, breached Police policy by failing to put on their ballistic body armour.

ISSUE 2: WERE OFFICERS B AND C JUSTIFIED IN SHOOTING MR TOMS?

110. As discussed in paragraphs 90, five bullet wounds to Mr Toms were examined. Three bullets were able to be removed from Mr Toms' body and analysed. All three of these bullets were determined to have come from Officer B's gun. These bullets related to the two wounds to Mr Toms' chest, and the wound to his lower back on the right-hand side. One of the wounds to Mr Toms' chest was the result of a bullet which went first through Mr Toms' hand, and then into his chest. The three bullets which could be examined from Mr Toms were therefore the cause of four wounds.
111. It is not possible to determine which gun fired the bullet that went through Mr Toms' forearm.

Self-defence and defence of others

112. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another.
113. In order to rely on a defence under section 48, the individual officer's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
- a) What were the circumstances as the officer believed them to be? (a subjective test)

- b) Was the officer's use of force for the purpose of defending himself or herself or another?
(a subjective test)
 - c) Was the force used reasonable in the circumstances as the officer believed them to be?
(an objective test)
114. In addition to examining the legality of the use of force (in this case firing a pistol at Mr Toms), the Authority must then consider whether, as a whole, it believes that the officers' actions complied with Police policy and were reasonable in the circumstances.
115. Police policy provides that a suitably qualified officer may use their firearm when they believe someone is going to kill or seriously harm them or someone else. Police must give the person posing a threat the opportunity to surrender, if practicable, and employ non-lethal tactical options to arrest or disarm the person if they are available.
116. Police firearms training emphasises the continual assessment of risk when firing at someone. In some circumstances, this will require a reassessment after each shot, while in others, officers may be justified in firing a burst of shots before reassessment.
117. Police trainers advised the Authority that Police are trained to shoot until "*the threat is neutralised or incapacitated*". This may include circumstances where a weapon is dropped to the ground or where an individual with a weapon has ceased advancing on officers.
118. The Authority recognises that on most occasions where officers find themselves having to act to defend themselves or others, the situation is dynamic and fast moving, so that it will sometimes be unrealistic to expect officers using a firearm in self-defence to conduct a risk assessment on each occasion before they pull the trigger.
119. When confronted by an advancing person who is using or threatening to use lethal force, a proportionate response by the confronted officer may be to pull the trigger in rapid succession – and this is what officers are trained to do. In these cases, the catalyst for a risk reassessment should be an identifiable change in the circumstances of the threat - for example, the person wielding the weapon stops, turns, drops the weapon, or stops firing. Changes such as these are manifestations of "*the threat being incapacitated*". To continue to pull the trigger in that situation without reassessing the risk would likely lead to the conclusion that the officer was no longer acting in self-defence or that the use of lethal force was disproportionate to the changed threat.
120. The availability of self-defence in this case must be considered on this basis.
121. There were two sets of shots: four that were fired as Mr Toms advanced towards Officer B; and eight that were fired after Mr Toms turned and ran from the officers. We turn to assess the availability of the section 48 defence in respect of each set of shots separately.

Were Officers B and C justified in firing shots 1-4 at Mr Toms as he was advancing on Officer B?

a) What were the circumstances as Officers B and C believed them to be?

122. Both officers knew that Mr Toms was armed with a machete.
123. Officer B said that, when Mr Toms advanced towards him despite his persistent appeals for Mr Toms to stop, drop the machete and lie on the ground, he perceived that Mr Toms intended to use the machete to assault him or Officer C and this could cause a potentially lethal injury. His belief in this respect was reinforced by the fact that Mr Toms had already used the machete on the front passenger window of the Police vehicle where Officer C had been sitting (see paragraph 46), and that if the window had not been closed, Officer C would have likely been seriously injured or killed.
124. Likewise, Officer C said that, when he observed Mr Toms advancing towards Officer B, he was conscious that Mr Toms had recently hit the Police car in what he considered to be an attempt on his life, and he believed that if they did not stop Mr Toms, he was likely to assault one or both of them with the machete.
125. The Authority is satisfied that these accounts clearly demonstrate that Officers B and C both perceived that Mr Toms posed an imminent threat to their safety when he advanced towards them with the machete.
126. The officers said in interviews that they were not aware other Police officers were behind them. Officer B explained that he was unsure what backup was available to them on the ground. He said he knew Police were in the area because they had spiked Mr Toms' car, and he knew officers had been called from Warkworth, but he did not know how far away they were. When asked if he knew there were other patrol cars directly behind him, he said:
- "... I didn't know whether they were [Police] units or members of the public... none of us had our lights on because we weren't in pursuit. State Highway 1... has a lot of traffic... so I didn't know... whether they were Police cars to be honest because... we're sticking to the speed limit because Eagle had views on him so there was no need for us to rush up behind him."*
127. Officer C similarly said in interview that *"it was only after shots were fired that I became aware that other officers had arrived at the scene."*
128. A review of the communications transcript and Eagle footage shows that numerous Police officers indicated their presence over the radio:
- As outlined in paragraph 14 above, Officers E and D, as well as Officers B and C, indicated over the radio that they were en-route to assist Officer A.
 - Officer K also advised that his staff would provide cover for officers in Orewa so they could go and assist Officer A. Later, Officer K advised that he had stopped traffic at the tunnel.

- Officers B and C would also have heard Officers F, E, and G advise that they had spiked Mr Toms' vehicle and might therefore have been expected to know that those officers were nearby.
- Officer D advised via the radio that he was "*in behind the other units*" about seven minutes before the shooting.
- About 36 seconds before Mr Toms stopped his car, Eagle advised over the radio that "*... it looks like three Police cars in behind, if not more further back...*"

129. Nevertheless, having carefully considered the accounts provided by Officers B and C, the Authority accepts that they were so focused on the actions of Mr Toms after their earlier life-threatening encounter with him that they probably did not register the significance of the radio traffic. It is not clear whether they were even aware that other cars had stopped behind them. However, even if they were, the Authority accepts they did not know whether they were Police or members of the public. They therefore acted on the basis that there was nobody else in a position to mitigate the immediate threat Mr Toms posed to them.

b) Did Officers B and C use force for the purpose of defending themselves or another?

130. In response to this threat, Officers B and C each fired two shots at Mr Toms. These four shots were fired within the space of a second.

131. Mr Toms carried on advancing towards Officer B with the machete swinging as the four shots were fired and reached to within about 1.5 metres of Officer B without showing any signs of halting his advance. Immediately after the fourth shot had been fired, Mr Toms turned and ran in the opposite direction. Officers B and C both said they believed that Mr Toms posed a continuing threat during this period.

132. In particular, Officer B said he "*discharged my firearm a number of times as I feared for my life*", while Officer C said that he "*genuinely feared for [Officer B's] life and thought if we do not stop him, he would either kill or seriously injure my partner and/or myself.*"

133. The Authority therefore accepts that, given the perceived threat, the officers clearly fired these four shots for the purpose of defending themselves and each other.

c) Was the force used reasonable in the circumstances as Officers B and C believed them to be?

134. A machete is a weapon which has the potential to seriously injure or kill someone and can be used at a range beyond which an unarmed person is able to effectively defend themselves.

135. Given that Mr Toms was within close proximity of Officer B and purposefully walking towards him despite shouted appeals from him for Mr Toms to stop, put the machete down and lie on the ground, the officers had no other less lethal tactical options available to them to avert the threat. In the circumstances, the use of a Taser, pepper spray or baton would have been unlikely

to incapacitate Mr Toms before he was able to launch an attack,³⁰ and they were justified in concluding that the other officers nearby were not in a position to assist.

136. The first four shots discharged by Officers B and C were therefore a proportionate response to the threat posed by Mr Toms and constituted justified self-defence and defence of others under section 48 of the Crimes Act 1961.
137. Two of these shots caused the injuries that proved fatal to Mr Toms.

Were Officers B and C justified in firing shots 5-12 at Mr Toms after he turned and ran?

a) What were the circumstances as Officers B and C believed them to be?

138. Mr Toms turned and ran in the opposite direction to Officers B and C immediately after the fourth shot was fired at him. During the following three seconds before Mr Toms fell to the ground, a further eight shots were fired (three by Officer B and five by Officer C).
139. Officer B told the Authority that at this point he believed Mr Toms *“was still a threat to everyone that was around”*. In other words, Officer B believed that, while Mr Toms no longer posed an immediate threat to him and Officer C, he still had the machete in his hand and therefore posed an imminent, albeit non-specific, risk of inflicting serious injury on any other person he came across, including other road users. He also remained of the view that other Police units were too far away to provide immediate assistance.
140. The Authority accepts this was Officer B’s perception.
141. Officer C’s perceptions were quite different. In an interview he reiterated Officer B’s view that Mr Toms was *“a huge threat to other people on the road. If he got away he could’ve... got into someone else’s car, taken off or he could’ve done something to them.”* However, he also said he could not recall firing after Mr Toms turned and ran from them, and believed all his shots were fired while Mr Toms was still advancing. He said that after the last time he pulled the trigger: *“I think he just turned around and then he ran... I remember my gun going off last when he turned around and ran off.”*
142. Officer C’s recollection cannot be reconciled with the evidence available, as he himself has now acknowledged. The Eagle footage shows he fired five further shots at Mr Toms after he turned and began running away. Two of these, shots 11 and 12, were fired after Mr Toms had dropped the machete on the ground. Officer C can be seen adjusting his aim to account for Mr Toms’ movement.
143. However, the Authority recognises that the shooting happened quickly, lasting approximately four seconds in total. It was an extremely high-stress situation, and Officer C was an inexperienced officer who, at the time of this incident, was a probationary constable and had only very recently graduated from Police College. The Authority does not consider that Officer

³⁰ According to Police policy, a Taser’s ideal range for deployment is between 2-4.5 metres, and as mentioned above, two probes need to connect with a person for the Taser to be effective.

C was dishonest in his account when he told the Authority he did not fire again after Mr Toms had turned and started running. Rather, it is likely that in the stress of the moment and the highly compressed timeframe within which the shots were fired, he carried on firing without processing in his mind the fact that circumstances had changed. As a result, his perception of the threat remained as it was when the first four shots were fired.

b) Did Officers B and C use force for the purpose of defending themselves or another?

144. The Authority has therefore determined that, for different reasons, Officer B's and Officer C's purpose at the time they fired shots 5-12 was to defend either themselves or others. Officer B was acting in response to a general and non-specific threat to those in the area, while Officer C was acting primarily in response to his ongoing perception of a threat to Officer B and himself.

c) Was the force used reasonable in the circumstances as Officers B and C believed them to be?

145. Officers B and C perceived that they needed to act to stop the ongoing threat posed by Mr Toms for different reasons, and the reasonableness of their response needs to be assessed in that light.

146. Officer C's perception, albeit mistaken, was that the original threat was unchanged. It follows that his actions in continuing to fire were reasonable in the circumstances as he believed them to be, and can be justified as self-defence and defence of others under section 48 of the Crimes Act 1961.

147. In contrast, Officer B's perception was that Mr Toms posed a general threat to others that needed to be neutralised, and he continued to fire for that reason.

148. There was in fact little immediate threat at that stage. Firstly, the other officers who had arrived on the scene were behind Officers B and C, and Mr Toms was not running in their direction. A machete is also a close-quarters weapon, meaning that Mr Toms would have needed to be in close proximity to another officer before he could harm them. Therefore, Police would have had sufficient time to react if he had subsequently come towards them with the machete.

149. Secondly, no other members of the public were on foot in the vicinity. It was approximately 4am, and the only traffic in the area (other than the stationary Police vehicles) was mobile. Moreover, Mr Toms was running towards the far side of the road, where there was bush and little else. He was also on foot, and therefore would not have been able to travel very far very quickly.

150. The Authority therefore considers that, when Officer B fired shots 5, 7, and 9, there was in fact no imminent and specific threat to himself, other Police or any member of the public.

151. However, Officer B's actions need to be assessed in light of the fact that he was making instant decisions in a highly stressful situation; he did not know other Police were in the immediate vicinity; and he thought that other members of the public might have stopped at the scene. Given Mr Toms' prior actions, it is therefore understandable that Officer B's mind was focused on neutralising the threat that he believed he posed. As soon as Mr Toms dropped his weapon, Officer B stopped firing.

152. Looked at objectively with the benefit of hindsight, there were other less forceful tactical options available. For example, as discussed in greater detail below (see paragraphs 213-215), a Police dog handler was nearby and preparing to deploy his dog when Officers B and C opened fire. When a person is fleeing Police, Police dogs are often the most practical and reasonable response available. A Police dog is able to cover relatively large distances in a short time, can bring a person to the ground and under control, and are a non-lethal tactical option. Officer B's decision to continue firing precluded this possibility.
153. However, in terms of self-defence, Officer B's actions must be judged according to the circumstances as he perceived them to be in the heat of the moment. Applying that test, the Authority has concluded that the three shots fired by Officer B after Mr Toms turned and ran (shots 5, 7 and 9) were a reasonable use of force for the purposes of defending others and can be justified under section 48 of the Crimes Act 1961.

Overall reasonableness

154. The Authority has also considered the overall reasonableness of the actions of Officers B and C, and other officers, during the events that led to the shooting.
155. As Mr Toms slowed after his car was spiked for the third time, Police closed up behind him. When Mr Toms stopped, Officer B stopped approximately ten metres behind Mr Toms' car. However, Officers B's patrol car rolled forward about two metres before Officer C applied the handbrake.
156. The Authority asked Officer B whether he considered stopping further away from Mr Toms. Officer B said:
- "The only thing I considered... as the vehicle was coming to a stop... [was] that he was an extreme threat to everybody on that road, members of the public, us, everyone, and that is the reason why I didn't hold back, I went up to him because I needed to stop this man who... it was clear... was out to harm somebody or kill somebody."*
157. The situation with Mr Toms was undoubtedly serious: he had acted in a dangerous manner by wielding a machete, and some action from Police was clearly required. However, his car had been spiked three times, meaning that it was reasonable to assume he would come to a stop. It was approximately 4am, the roads were reasonably quiet, and Police were diverting northbound traffic. Eagle was also above providing commentary.
158. The Authority's view is therefore that there was time for Police to develop a plan to deal with Mr Toms, and Officers B and C should have turned their minds to coordinating a response capable of bringing the incident to a safe conclusion rather than putting themselves into a position of immediate danger.
159. Equally, the NorthComms Shift Commander was aware that the following resources were immediately available to Police:

- Officers B and C (both equipped with pistols);
- Officer A (equipped with a pistol);
- Officer D (equipped with a Police dog and a pistol);
- Officer I (equipped with a rifle);
- Officer E (equipped with a pistol);
- Officer F;
- Officer J; and
- Eagle was also above providing commentary.

160. The Shift Commander has since told the Authority he was actively controlling the incident and it is his role to act when intervention is necessary. He indicated that the officers on the ground were setting up road spikes, road blocks, and preparing for a high-risk vehicle stop. He relies on staff to make the right decisions without micro-managing them.

161. The Authority maintains that the Shift Commander should have developed and communicated a plan to safely contain Mr Toms. The lack of adequate communication and direction from the Shift Commander (discussed further below, from paragraph 189) was significant. Had active control of the incident been taken, the plentiful Police resources could have been appropriately marshalled, likely resulting in a very different outcome. The Authority therefore considers that Police could have contained Mr Toms in a more controlled manner, limiting any risk to the public and averting the circumstances that led to his death.

FINDINGS ON ISSUE 2

When Officers B and C fired shots 1-4 (including the shots that caused Mr Toms' death), they were justified in doing so in self-defence and defence of others.

When Officers B and C fired shots 5-12, they were justified in doing so in self-defence and defence of others.

Officers B and C should have turned their minds to coordinating a response capable of bringing the incident to a safe conclusion rather than putting themselves into a position of immediate danger.

ISSUE 3: DID POLICE ENSURE THAT APPROPRIATE MEDICAL ASSISTANCE WAS PROVIDED TO MR TOMS?

162. Police policy on use of force requires that an injured person *"must be medically examined by a qualified medical practitioner as soon as practicable..."*

163. Police approached Mr Toms when he was lying on the ground. He was handcuffed and searched to ensure he did not have any other weapons. At this time, Police realised Mr Toms had been shot. Officer C retrieved a first aid kit from the patrol car. Officer I contacted NorthComms and requested an ambulance.

164. Officers A and E attempted to apply first aid to Mr Toms. When Officer I noticed that Mr Toms did not have a pulse, he had Mr Toms' handcuffs removed and applied compressions. Officer E cut open Mr Toms' shirt and attempted to use the defibrillator to restart Mr Toms' heart. The defibrillator showed "no shock" as an instruction. An ambulance arrived within minutes, and ambulance officers took over the care of Mr Toms.
165. The Authority considers that it was reasonable for Police to approach Mr Toms with caution, given his earlier erratic and dangerous behaviour, and his use of a weapon. It was appropriate for them to handcuff him to ensure their safety. As soon as Police saw that Mr Toms had been shot and he no longer posed a threat, his handcuffs were removed, an ambulance was called for, and first aid undertaken.
166. The Authority therefore finds that Police provided appropriate medical assistance to Mr Toms.

FINDING ON ISSUE 3

Police ensured that appropriate medical assistance was provided to Mr Toms.

ISSUE 4: DID POLICE PURSUE MR TOMS? IF SO, DID THIS COMPLY WITH POLICY?

Did Police pursue Mr Toms?

167. Police policy defines a fleeing driver as "A driver who has been signalled to stop by a constable but fails to do so." If this occurs, an officer may initiate a pursuit. Police policy does not explicitly define a "pursuit". However, the Authority's view is that if a driver is signalled by Police to stop and fails to do so, and Police officers subsequently follow that vehicle, this amounts to a pursuit. In such circumstances the 'Fleeing driver' policy applies.
168. When spoken to by the Authority, Officer A was clear in his view that he did not 'pursue' Mr Toms.
169. The Shift Commander said in his statement to Police that Officer A "was following the offender at a distance, keeping the vehicle in sight until further assistance could arrive, but he was not in pursuit".
170. On two occasions, Police sought permission to pursue Mr Toms, and this was declined while they awaited the arrival of Eagle. The Shift Commander instructed Police to follow Mr Toms and observe him from a distance. When asked about his rationale for declining permission to pursue, the Shift Commander said:

"The problem with that is that... although he was speeding, 150 at one point through a certain area, I did not want him to go any quicker, I wanted him to hold off. I needed to get my personnel with spikes in place further down the line. My experience has showed that when a person is being chased in a pursuit they go, continually at whatever break[neck] speed and they will not stop. My experience in this of not having a... person... followed by red and blue lights... is that they tend to button off and they take care a lot more. And I would guarantee that at 90%."

171. The Shift Commander was therefore clear in his view that Police did not ‘pursue’ Mr Toms.
172. When spoken to by the Authority, the officers involved in the field were consistent in their view that Police were not in a pursuit.

The Authority’s view

173. Mr Toms was signalled to stop on two occasions:
- As outlined above at paragraph 19, when Mr Toms got out of his car and stood in the middle of State Highway 1, Officer A was concerned that oncoming traffic would not see Mr Toms. Officer A did a U-turn to move behind Mr Toms’ car and activated his patrol car’s red and blue flashing lights. Mr Toms got back into his car and drove off. Officer A followed with his patrol car’s red and blue flashing lights still activated.
 - As outlined above at paragraph 33, as Officers B and C were catching up to Mr Toms near Wellsford, Officer B drove at about 150 kph in an 80 kph zone, with the patrol car’s red and blue flashing lights and sirens activated.
174. All officers who followed Mr Toms told the Authority they were not pursuing him. However, it is clear that Mr Toms was signalled to stop on two occasions. Despite this, Mr Toms continued driving away from Police in an erratic and dangerous manner. Police followed him for a distance of about 16.7 kilometres, during which time Mr Toms stopped on more than one occasion, interacted with Police, then continued driving.
175. On the balance of probabilities, the Authority has concluded that Mr Toms knew Police were following him. For their part, various Police officers were following Mr Toms at speeds often in excess of the speed limit. Their intention in following him and spiking his car was to apprehend him. Therefore, although permission to pursue Mr Toms was denied on two occasions by the NorthComms Shift Commander, the Authority’s view is that the Police actions constituted a pursuit. The Authority also considers that Police officers were justified in initiating a pursuit, given the actions of Mr Toms and the risk he posed to other members of the public.

Did the pursuit comply with the requirements of the ‘Fleeing driver’ policy?

176. The Authority considers that the rationale underpinning the Shift Commander’s refusal to allow a pursuit of Mr Toms was a sound tactical consideration in the circumstances. However, beyond requests to pursue being declined, this rationale was never broadcast. In fact, as outlined in paragraph 173 above, Mr Toms had been signalled to stop and a pursuit had commenced. Despite that no further consideration appears to have been given to the provisions of the Police’s ‘Fleeing driver’ policy.
177. The Shift Commander should have articulated his rationale for declining requests to pursue Mr Toms. He should also have been alive to the fact that Police were pursuing Mr Toms, despite his view that a fleeing driver event had not been initiated. A degree of intrusive oversight was therefore necessary, as was compliance with the ‘Fleeing driver’ policy, taking into account his tactical approach.

178. Officers following Mr Toms should also have recognised they were engaged in a pursuit. They should therefore have complied with aspects of the ‘Fleeing driver’ policy that were consistent with the Shift Commander’s directions, despite his concerns regarding Mr Toms’ possible response to the activation of red and blue lights and sirens not being broadcast.³¹
179. The relevant aspects of the ‘Fleeing driver’ policy that should have been observed were:
- notification to NorthComms that Mr Toms had failed to stop when signalled to do so (see paragraph 173);
 - the provision of the pursuit warning;
 - the provision of regular commentary from pursuing units prior to the arrival of Eagle; and
 - limits on the number of Police vehicles following Mr Toms.
180. It is clear from Eagle footage that in the minutes before Mr Toms stopped for the final time, there were at least five Police patrol cars following him. The Authority notes that at the time of or immediately after the shooting, there were at least seven Police cars at the scene. These officers were not preparing tactical options, undertaking a temporary road closure, or collecting intelligence.³² Rather, they were following Mr Toms in order to be on hand to assist when he eventually stopped.

FINDINGS ON ISSUE 4

Police pursued Mr Toms.

The rationale underpinning the Shift Commander’s decision to decline requests to pursue Mr Toms was tactically sound. However, officers should have recognised Police actions *did* constitute a pursuit and turned their minds to the relevant provisions of the ‘Fleeing driver’ policy.

ISSUE 5: WAS THE USE OF ROAD SPIKES ON THREE OCCASIONS APPROPRIATE AND IN ACCORDANCE WITH POLICY?

181. Road spikes are often used as a tactical option to stop fleeing vehicles in the safest possible manner, with the minimum force necessary. Police policy on the use of road spikes requires that Police prioritise the safety of themselves and the public when deciding whether to deploy them. Certified officers may deploy road spikes when there is no other, less dangerous, means of stopping a fleeing vehicle, and they can be used without unjustified risk to any person. Policy emphasises that no duty is so urgent that it requires the public or Police to be placed at unjustified risk.
182. Mr Toms was mobile, driving in a dangerous manner, at high speeds and often with his car’s headlights off. He had been out of the car wielding a machete on two occasions. The Authority therefore accepts it was important to stop him, as he posed a significant ongoing risk to Police

³¹ See paragraphs 225-228 below for policy.

³² There are exceptions to the limit on the number of Police cars following, as set out in Police Policy.

and members of the public. The Authority considers that road spikes were an appropriate tactical option. Police had already followed Mr Toms with their red and blue flashing lights activated, and he had not stopped for them. There were no other, less dangerous means of stopping the Subaru.

183. The Authority notes that Mr Toms' car was spiked three times over the course of the pursuit. Authorisation to spike was requested and given on each occasion. Police coordinated the deployment of each set of road spikes well, advising where they had been set up over the Police radio so that NorthComms and the Police officers following Mr Toms were aware of the spiking sites. Eagle also provided useful commentary throughout.
184. Each spiking was effective; the Subaru lost three tyres and the one that remained was deflated. However, it took the cumulative effect of all three sets of road spikes to bring the Subaru to a stop.

FINDING ON ISSUE 5

Police's use of road spikes on the three occasions was appropriate and in accordance with policy.

ISSUE 6: WAS THERE CLEAR AND ADEQUATE COMMUNICATION, CONTROL AND COMMAND OF THE INCIDENT?

185. The 'Radio protocols' chapter of the Police Manual sets out communication requirements and incident control responsibilities for when Police are responding to incidents. The policy states: *"An efficient and effective Police response to incidents requires that everyone involved in the process clearly understands their own role and responsibilities, and those of the other participants."* The Authority has formed the view that that was not the case during this incident.
186. When responding to an incident, a Police response includes both command and control. These have interlinked but distinct meanings. According to Police policy: *"'Control' refers to the responsibility for coordinating and directing the response to an incident."* By comparison: *"'Command' operates vertically within an organisation. It describes the internal ownership, administrative responsibility, and detailed direction of an agency's personnel and resources."*

Eagle

187. As soon as Eagle were overhead they took responsibility for communication. Eagle gave ongoing updates regarding the progression of the incident, directed Police to move back when they neared the Subaru, and suggested tactical options such as spiking and a high-risk vehicle stop (discussed in detail at paragraph 199).
188. Control was never formally handed over to Eagle by the Shift Commander. When spoken to by the Authority, the officers in Eagle had differing views of their role and responsibility. One officer said that command rested with the Shift Commander and their role was to provide information and make suggestions as to tactics that could be used, but it is the role of the Shift Commander to agree and authorise any tactics. The other officer's supervisor explained:

“We assume control, but there’s no actual command delegated, no authority to direct as such. It’s, it’s more of a, an assumption from the ground and the fact that the burden kind of gets adopted by us purely because we’re in the best perspective to offer real-time information.”

Shift Commander

189. According to Police policy, the communications centre (here, NorthComms) is responsible for the initial Police response to an incident. The responsibility to act as the ‘Incident Controller’ formally lies with the communications centre Shift Commander.³³ The Shift Commander makes the final decision on operational matters and *“is expected to actively manage, direct and supervise those staff responding to the incident, including initial tactics to be utilised”*.
190. The policy provides that the communications centre retains the responsibility for the incident until that role is formally passed to a suitable officer in the field. The policy sets out formal procedures for handing over this responsibility, and states that incident control will not be handed over to a field supervisor until he or she has arrived at a safe forward point, been fully briefed, and formed a tactical response plan.
191. In this case, when the Shift Commander was advised an incident was unfolding, he immediately sat next to the dispatcher and *“took control”* of the incident. From that time, the Shift Commander was in command of the incident until control and command was passed to a field officer, after Mr Toms had been shot. As explained above, command was never passed to Eagle during the incident.
192. The Authority has examined the transcript from the radio communications in relation to this incident and is concerned at the lack of proactive direction issued by the Shift Commander. The dispatcher, on the Shift Commander’s behalf, provided only the following instructions to Police officers following Mr Toms:
- 03.27.29am “[outlines Officer A’s location] *just need assistance there ASAP’s. Over.*”
 - 03.39.15am [When asked by Officer E about initiating a pursuit] *“not yet at this stage, just trying to get Eagle. Over.”*
 - 03.45.26am *“A-ffirm. Permission to spike.”*
 - 03.45.41am *“Roger. [Officers L and F], if I get you to set up spikes, just before he enters your area. State Highway 1, Hudson Road perhaps. Over.”*
 - 03.46.41am *“Negative”* [to request from Officer B to pursue]
 - 03.46.58am *“Roger. [Officer B] just maintain obs in behind the vehicle.”*

³³ An Incident Controller should have oversight of an entire incident so that resources can be managed effectively, and risks properly assessed.

- 03.47.13am “A-ffirm” [to request from Officer F for permission to spike].
- 03.51.10am “Roger. [Officer E], he’s coming towards you ... get ready for spikes again.”
- 03.53.57am “[Officers G and H]. Comms. That’s a-ffirm, stop northbound traffic. Over.”
- 03.58.25am [When Eagle suggests putting a Police unit ahead of Mr Toms to stop traffic] “Roger. [Officers G and H]. Comms. You copy that?”
- 04.03.56am “Roger. If we could get you north to start blocking that traffic. Over.”

193. No tactics or plan regarding what to do once Mr Toms stopped was articulated by the Shift Commander. The Shift Commander has since told the Authority that active planning was taking place within NorthComms and involved a number of staff. He further indicated that a high-risk vehicle stop was a standard response for dealing with a mobile armed offender, that frontline officers did not have to be reminded of the minutiae of this tactic, and that it would be impractical and time-consuming to broadcast directions over the radio. The Shift Commander was of the view that “*the broad plan*” was understood by the frontline officers and did not need to be communicated.

194. During his discussion with the Authority, the Shift Commander explained that his plan to manage this incident was: “*spike [Mr Toms’ car], wait for it to actually come to a halt and effect an arrest.*” He discussed the usefulness of having Eagle overhead to provide a bird’s-eye view of the situation. Regarding his control of the situation prior to Eagle arriving, he said:

“... when we backed off I believed that he would slow down and drive a lot more carefully and our response, or my response in this role was going to be wait for the resource that was actually going to aid me a lot more and that was Eagle.”

195. When asked about the role of Eagle and how they interact with the Shift Commander role, he said:

“So, they automatically go into their role of over-watch, if you want to call it that, put staff into these certain places and give some – and give directions. If any of those directions are something that I do not agree with I will bump on and say, ‘I don’t agree with that. We’re not doing that.’ But they are being very good.”

196. The Shift Commander later told the Authority that, in his view, Eagle have “*forward command of what they could see*”.

197. The Authority queried why the Shift Commander had not been more active in directing Police. He explained that the field officers were responsible for making their own decisions. If they or Eagle said something he disagreed with, he would have said so over the radio. However, in his view there was a plan in place which he was happy with, the plan did not change, and therefore he did not need to interfere. The Shift Commander was also concerned about speaking unnecessarily over the Police radio when Eagle was using it to provide ongoing updates:

“I had to trust [the Police] on the ground to make those spike locations their own decisions. There are times if they get an opportunity to say, ‘spikes here’. If I disagree with that I will [j]ump in. ... If you clutter the radio the information that

is coming in it won't get sent. So... if there's something that does need to be said over the radio then it has to be important."

198. The Shift Commander further said:

"I have on other occasions provided a plan over the air and I like to do that. But the plan for this one hadn't changed. ... we had a gentleman in a car, he's not stopping. We're going to spike, bring him to a stop and let the frontline staff make a response based on what actions he does."

High-risk vehicle stop

199. Despite the lack of adequate direction from the Shift Commander, most of the officers involved appear to have had the same broad understanding of what was going to happen. When spoken to by the Authority, all of the Police pursuing Mr Toms said their understanding was that they would follow Mr Toms at a distance and, once he came to a stop, do a high-risk vehicle stop. Eagle suggested this plan about fourteen and a half minutes after Officer A first called to advise NorthComms about Mr Toms, and about 17 minutes before Mr Toms was shot.
200. There was time to communicate the plan and ensure all Police field officers knew who was present and what their roles would be when executing the high-risk vehicle stop. However, the plan was never confirmed or declined by the Shift Commander or discussed between any of the officers in pursuit, particularly as to what their individual roles would be in undertaking a high-risk vehicle stop.
201. Officer B explained that a high-risk vehicle stop *"involves voice appeal from a patrol car with a gun pulled and pointing at the person in question"*.
202. As part of its investigation, the Authority has explored how officers are trained to conduct high-risk vehicle stops. An experienced trainer from the Police College provided a statement outlining what officers are taught. This statement emphasises that officers are taught to conduct the manoeuvre with extreme caution. The Armed Offenders Squad (AOS) should be considered as a first option where possible.
203. According to the Police trainer, unless unavoidable, Police should not initiate a high-risk vehicle stop unless they are fully prepared and have all available resources in place. If a Police dog is available, then its use is recommended.
204. If a high-risk vehicle stop is undertaken, it should ideally be done with two or more patrol cars. It can be undertaken with only one patrol car in extreme circumstances, but this is not recommended. The Authority notes that Officer B parked his patrol car in approximately the recommended position for a high-risk vehicle stop.
205. However, there were a number of Police resources, including armed officers and a Police dog handler, available to assist with the high-risk vehicle stop. These resources were not coordinated, and Officers B and C attempted to undertake a high-risk vehicle stop by themselves. The Authority is concerned that these actions were not in accordance with the

Police trainer's statement, indicating that officers should *"be patient and disciplined, as hasty actions could be unsafe for both the apprehending officers and the general public"*.

206. The Shift Commander, for his part, should have more proactively managed the situation. As discussed above, although all officers spoken to by the Authority said they were expecting a high-risk vehicle stop of Mr Toms' car; there was no planning or coordination of this.
207. Had a plan been properly formulated, this would have meant Officer B would have parked further away from Mr Toms and delayed his interaction with him. In that instance, further tactical options would have been available to him. Officer D was close behind Officers B and C and had a Police dog with him. The Authority considers that the appropriate course of action would have been for Officer B to stop and create a safe forward point, from which the field officers could coordinate. Police could then assess the situation and deploy with a range of tactical options, including Tasers, pistols, rifles, and if appropriate, the Police dog.

Conclusion regarding command and control

208. The Shift Commander said he considered calling the AOS. However, he quickly dismissed the idea as he did not think the AOS would have *"even given us a thought"*, and because he thought there were enough Police resources in place already. In the circumstances, the Authority is satisfied that there were sufficient resources available to Police for them to adequately deal with the situation without calling AOS.
209. The Authority notes that the role of Eagle within the incident was not clear. While the Shift Commander retained command throughout this incident, there were differing views as to whether Eagle had a command and/or control role within the incident. The current policy does not specifically outline the parameters of any control and command role that Eagle may undertake. In this incident the Shift Commander considered that Eagle had 'forward command' and as such could direct tactical options such as a high-risk vehicle stop. The Shift Commander considered his role to be more observational and assumed the Police field officers had all the necessary information to make their own individual risk assessments and carry out the high-risk vehicle stop.
210. Eagle considered that command rested with the Shift Commander. The officers in Eagle had differing views about their level of control over the incident and ability to direct Police field officers. It is clear that the Police field officers did take direction from Eagle during the incident, given there was little proactive direction from the Shift Commander, particularly as to how the incident should be resolved once Mr Toms' car stopped.
211. These differing views demonstrate that the role of Eagle and a Shift Commander during such incidents needs to be clarified and clearly understood.
212. The Authority considers the command role to be an active one, and not merely an observational position. The Shift Commander should have been more proactively involved in managing the incident, including indicating which officers should be involved in the high-risk vehicle stop, what their roles would be, and what the other officers should be doing. A clear, specific plan should have been formulated and verbally articulated by the Shift Commander over the radio.

Deployment of Police dog

213. Approximately seven minutes before Mr Toms stopped his car and approached Officers B and C for the second time, Officer D, the dog handler, advised over the Police radio that he was “*in behind the other units*”. Officers B and C and the Shift Commander should all therefore have been aware of the presence of a Police dog handler and his dog. There was no communication from anyone about using the Police dog as a tactical option.
214. The Authority is of the view that, had a plan been articulated over the air, Officer D could have deployed his Police dog from a safe distance as a possible first tactical option. This non-lethal option was available and should have been considered in accordance with the best practice standard of high-risk vehicle stops discussed above. As it was, Officer D was in the process of getting his Police dog out of the Police vehicle for deployment when the first shots were fired.
215. Although the Shift Commander insists that it would be impractical to do so, due to the nature of the Police digital radio system, the Authority considers that he had a responsibility to be aware of all tactical options available to Police, and to coordinate them accordingly. The Shift Commander should have directed all Police officers as to their roles and ensured that Police officers parked with enough space between them and Mr Toms, to enable a variety of tactical options to be considered or deployed.

111 call from Mr Toms’ mother

216. About five minutes before the pursuit ended, another dispatcher told the Shift Commander about the earlier 111 call Mr Toms’ mother had made to Police regarding her son. He read the information in the system about it but did not provide this information over the radio.
217. The Shift Commander later told the Authority:

“... even knowing that information I still would not have changed the way that I dealt with this. It made me more aware that he was actually in a, I don’t know, an agitated state... and if... a... member of the public [was] confronted with this person in that state, that’s something that I didn’t want.”

218. The Authority has formed the view that the 111 call to Police from Mr Toms’ mother would have been relevant to the field officers’ assessment of Mr Toms’ state of mind. Accordingly, the Shift Commander should have communicated that information.
219. The Shift Commander has since reasserted to the Authority that information concerning Mr Toms’ state of mind was not relevant and would not have changed how the incident was handled. The Authority disagrees with the Shift Commander’s view. The information would have informed the field officers’ risk assessments and may have caused them to revisit any plans to contain him. It may also have led them to consider that, given Mr Toms had exclusively targeted Police, he might goad them into a response that left no alternative but to use lethal force against him.

FINDINGS ON ISSUE 6

The Shift Commander did not provide adequate communication, control and command of the incident.

The Shift Commander should have ensured there was a clear, specific plan broadcast over the Police radio to all attending Police officers.

The Shift Commander should have advised the officers pursuing Mr Toms of the information from the earlier 111 call from Mr Toms' mother as soon as he became aware of it.

Conclusion

220. This was a tragic incident which resulted in Mr Toms' death. Mr Toms confronted officers with a machete on three occasions, and there was a lengthy pursuit during which Mr Toms' car tyres were spiked on three occasions. During the final confrontation two officers fired shots at Mr Toms in self-defence and he died as a result of the injuries he sustained.
221. The Authority has concluded that this incident was not well managed. There was no clear understanding of the roles and responsibilities of the different Police units, particularly where command and control lay between the Shift Commander and Eagle.
222. This led to poor communication and a lack of coordination and planning between Police staff. The Police field units were unaware of which officers were actively involved in the incident, which ultimately led to Officers B and C believing they were alone. This affected their risk assessments and led to the action that they took.
223. The Shift Commander assumed Police field officers would act on the commentary by Eagle and undertake a high-risk vehicle stop once Mr Toms' car came to a halt. No overall structure for the implementation of the high-risk vehicle stop was articulated by Police field officers over the radio and the Shift Commander was not proactive in ensuring that there was a proper plan in place. In the absence of any communication between them, each unit operated independently, leading to an uncoordinated response that meant the potential range of tactical options available to Police was not known or used.
224. Specifically, the Authority found:
- 1) All field officers on the ground were justified in arming themselves.
 - 2) Officers A, D, E, F, G, H, and I should have notified North Comms that they were arming themselves, and breached Police policy by failing to do so.
 - 3) Officers A, B, C, E and F, breached Police policy by failing to put on their ballistic body armour.
 - 4) When Officers B and C fired shots 1-4 (including the shots that caused Mr Toms' death), they were legally justified in doing so as they were acting in self-defence and defence of others.
 - 5) When Officers B and C fired shots 5-12, they were legally justified in doing so as they were acting in self-defence and defence of others.
 - 6) Officers B and C should have turned their minds to coordinating a response capable of bringing the incident to a safe conclusion rather than putting themselves into a position of immediate danger.
 - 7) Police ensured that appropriate medical assistance was provided to Mr Toms.
 - 8) Police pursued Mr Toms.

- 9) The rationale underpinning the Shift Commander's decision to decline requests to pursue Mr Toms was tactically sound. However, officers should have recognised Police actions *did* constitute a pursuit and turned their minds to the relevant provisions of the 'Fleeing driver' policy.
- 10) Police's use of road spikes on the three occasions was appropriate and in accordance with policy.
- 11) The Shift Commander did not provide adequate communication, control and command of the incident as a whole.
- 12) The Shift Commander should have ensured there was a clear, specific plan broadcast over the Police radio to all attending Police officers.
- 13) The Shift Commander should have advised the officers pursuing Mr Toms of the information from the earlier 111 call from Mr Toms' mother as soon as he became aware of it.



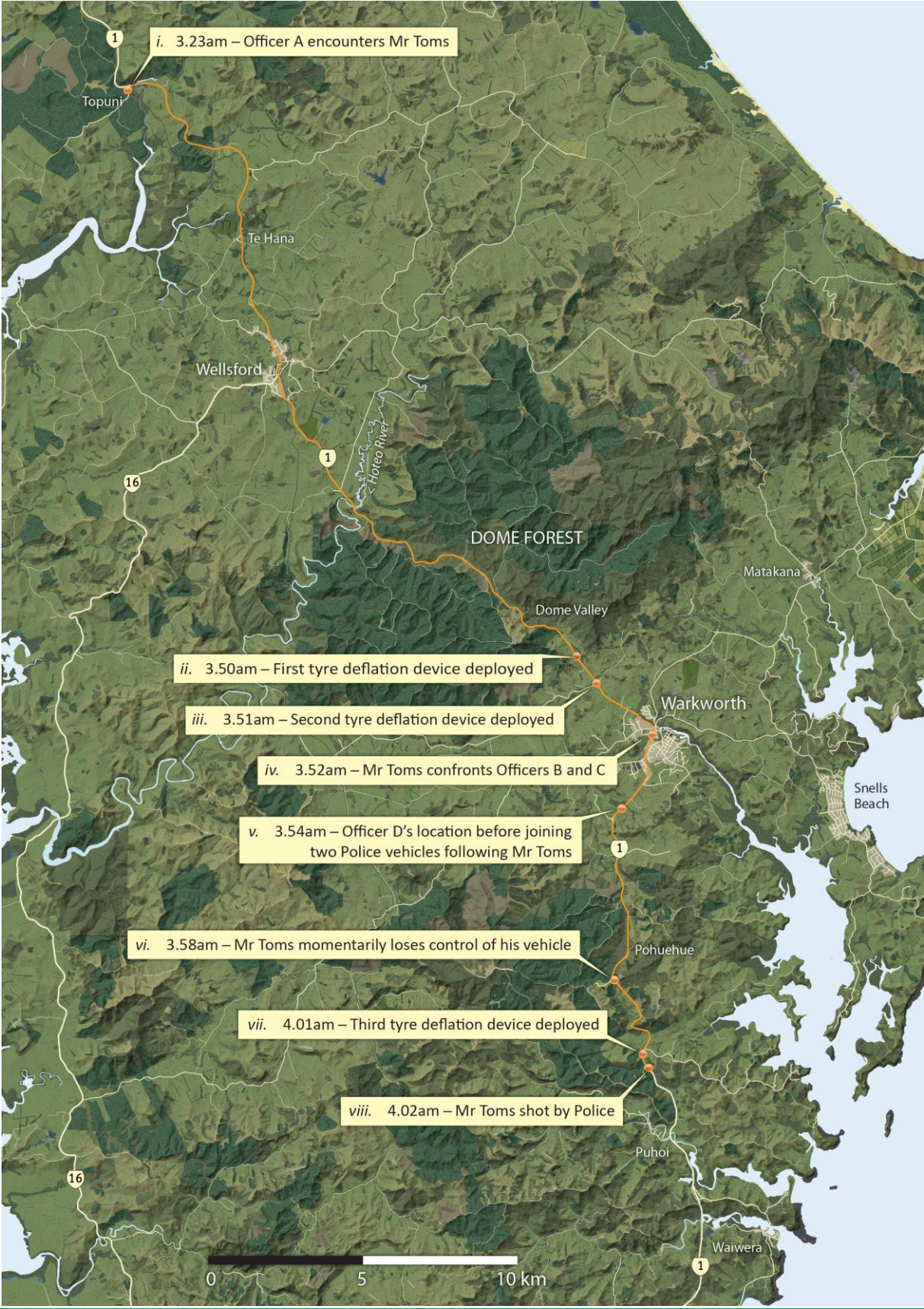
Judge Colin Doherty

Chair
Independent Police Conduct Authority

28 November 2019

IPCA: 17-2076

Appendix A: Map



Appendix B: Index of Officers

Communications Centre Staff	Roles/Comment
Dispatcher	The Comms dispatcher who received the radio transmission from Officer A asking for assistance. He notified the Shift Commander of a significant incident and relayed the Shift Commander's instructions over the Police radio for the duration of the incident.
Shift Commander	An inspector based at NorthComms. When advised by the dispatcher of the incident unfolding, the Shift Commander took control of the situation. The Shift Commander then had control and command of the incident until this was handed over.
Field Officers	
Officer A	A constable. Officer A was the first Police officer to interact with Mr Toms on the day of the incident. He pursued Mr Toms, and parked behind Officers B and C at the scene where Mr Toms was shot.
Officer B	A Constable. Pursued Mr Toms. Fired at Mr Toms five times.
Officer C	A Constable paired with Officer B. Fired at Mr Toms seven times.
Officer D	A Dog-handler. Joined the pursuit of Mr Toms. Parked behind Officer A at the scene of the shooting.
Officer E	A Sergeant. The supervisor for the Rodney area on 31 March 2018. Carried out the second spiking of Mr Toms' car and joined the pursuit.
Officer F	A Constable. On call. Carried out the first spiking of Mr Toms' car.
Officer G	A Constable. Carried out the third spiking of Mr Toms' car.
Officer H	A Constable. Partnered with Officer G.
Officer I	A Senior Sergeant, one of two District Shift Commanders from the District Command Centre. Participated in the pursuit. Undertook Incident Controller role at the scene after the shooting.
Officer J	A Constable. On call. Parked behind Officer F.
Officer K	A Sergeant. North Shore supervisor. Stopped north-bound traffic.
Eagle	Constables in Eagle. One officer sat in the front with the role of undertaking communication and operating the video camera. The other officer sat in the rear and provided intelligence updates to the crew. There was also a civilian pilot.

Appendix C: Laws and Policies

'FLEEING DRIVER' POLICY

Police Presence

225. If a fleeing driver was not driving in a dangerous or reckless manner prior to being signalled to stop, but begins to do so, the officer must determine as part of their risk assessment if they should continue to pursue the fleeing driver, due to the potential impact of their presence.

Responsibilities during a fleeing driver pursuit

226. Once a fleeing driver pursuit is commenced, officer actions should be flexible and appropriate to what are often rapidly changing situations, with all appropriate tactical options and resources available applied.

227. The lead or secondary vehicle drivers or their passengers, the field supervisor, and the pursuit controller all have a responsibility to make decisions about the safe management and apprehension of the fleeing driver. Any of these individuals can order the fleeing driver pursuit to be abandoned.

Responsibilities of the lead driver

228. The lead driver has primary responsibility for deciding whether to pursue a fleeing driver. The lead vehicle driver must:

- continuously assess the risks;
- ensure warning lights and siren are activated throughout the fleeing driver pursuit;
- where there is a Police constabulary passenger, direct that officer to undertake communications;
- notify Police Communications as soon as practicable and when it is safe to do so that a vehicle has failed to stop, location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not a reason in itself);
- acknowledge the pursuit warning given by the dispatcher;
- maintain regular communication with Police Communications when it is safe to do so; and
- comply with all directions from the Pursuit Controller.

USE OF ROAD SPIKES

229. Tyre deflation devices (road spikes) are often used as a tactical option to stop fleeing vehicles in the safest possible manner, with the minimum force necessary. According to Police policy, the overriding principle is that:

“Every deployment is inherently dangerous and Police deploying [road spikes] must take care to preserve the safety of themselves, their colleagues and members of the public. This must be the primary consideration at all times.”

230. Certified officers may deploy road spikes when there is no other, less dangerous, means of stopping a fleeing vehicle, and they can be used without unjustified risk to any person. Officers are instructed to consider, among other things, the urgency of the situation and how the deployment will impact on the fleeing driver and vehicle. Unless it is not possible to do so, officers must receive permission to deploy road spikes from the pursuit controller.

231. Under the policy, officers deploying road spikes are required to establish the speed of the pursuit, provide situation reports to the pursuit controller (i.e. the communications centre’s shift commander), and conduct ongoing risk assessments of the situation and deployment site. The pursuit controller must regularly question deployment staff about their risk assessment, including road and traffic conditions.

232. The deployment site must:

- provide cover and an escape route for the deploying officers;
- provide a clear view of the road;
- not be on or immediately before a bend in the road;
- be suitable for the safe and effective deployment of the road spikes; and
- be far enough away from the fleeing vehicle to allow time to select and assess the site and carry out the deployment.

233. The officer must continually assess the situation, using the TENR (discussed below at 243-249) model. Officers must abandon the deployment of the road spikes if instructed to do so by the pursuit controller, or if injury is likely to occur to the public, Police or the occupants of the fleeing car.

URGENT DUTY DRIVING

234. Urgent duty driving is when an enforcement officer on duty is driving above the speed limit or the natural flow of traffic and may not be complying with certain traffic rules. And is either:

- responding to a critical incident;
- gathering evidence of an alleged offence;

- apprehending an offender for an alleged traffic or criminal offence;
- apprehending a fleeing driver;
- providing security to, and facilitating the movement of, an official motorcade as part of an operation (as established in the relevant Operation Orders); or
- engaged in activities approved by the Commissioner in writing.

Policy principles

235. Operating a Police vehicle, especially when engaged in urgent duty driving, including when driving above the speed limit or the natural flow of traffic and at intersections, can increase the exposure to risk of injury to Police employees and the public. Urgent duty driving must be justified in response to the threat. Wherever possible lights and sirens should be continually used unless a tactical response is undertaken. Officers should continually assess the situation using the TENR framework.
236. A 'tactical approach' refers to urgent duty driving without the activation of either warning lights and/or sirens. Undertaking urgent duty driving without the activation of warning lights and/or sirens increases the road safety risks to public and Police. Therefore, using a tactical approach is the exception rather than the rule. Vehicle speed and manner of driving **must** reflect and take into account the increased risks resulting from the absence of warning devices.
237. If there is an officer undertakes urgent duty driving, they are required by Policy to comply with the law and drive in a manner that prioritises public and Police safety. A Police officer who is a passenger in a car where the driver is undertaking urgent duty driving is required by Policy to advise the driver about the route, situational factors, and risks and to operate the Police radio if required.

USE OF FORCE

Law on use of force

238. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*
239. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on use of force

240. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another. ‘Legal justification’ in this

sense means that this person is not guilty of an offence or liable to any civil proceeding in connection with their use of force.

241. The Police 'Use of Force' policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain or arrest a person, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
242. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR assessment.

Risk assessment (TENR: Threat-Exposure-Necessity-Response)

243. Police must apply TENR assessment methodology to all policing situations that involve risk and have the potential to cause harm. TENR assessments must be carried out in conjunction with the relevant Police manual chapters or policy.
244. The Police threat assessment methodology TENR is composed of Threat, Exposure, Necessity and Response:
- *Threat*: Any individuals or any actions or anything likely to cause harm.
 - *Exposure*: Potential for harm to people.
 - *Necessity*: Is about the officer's decision whether or not to respond to a given situation.
 - *Response*: An officer must consider all the circumstances and must be timely, appropriate and proportionate.
245. The overriding principle when applying TENR is that 'safety is success'. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
246. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.
247. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA)).

248. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
249. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Authorisation to carry firearms

250. The Police Manual authorises officers who hold the position of sergeant or above, and officers who are authorised by a district or communications centre supervisor, to carry firearms when there is "*clear and specific evidence*" that they may encounter circumstances in which they may be required to use a firearm.

Use of firearms

251. The 'Police firearms' chapter of the Police Manual instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act, and also sets out the circumstances in which the use of lethal force is justified.
252. Police must only use a firearm to carry out a lawful purpose, including defending themselves or others, arresting an offender, or preventing a person from escaping.
253. Police policy states that an officer may fire their gun when:
- "... their perceived cumulative assessment gives rise to an honest belief that the subject, by age, behaviour exhibited (death or grievous bodily harm), apparent physical ability, threats made and opportunity or a combination of these is capable of carrying out the threat of death or grievous bodily harm to any person."*
254. Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law and all relevant instructions and guidelines in the Police Manual. The instruction reminds officers that "*An overriding requirement in law is that minimum force must be applied to effect the purpose.*" It also says that: "*Where practical, Police should not use a firearm unless it can be done without endangering other persons.*"
255. Police policy requires that a person must not be shot until all of the following conditions have been satisfied:
- *they have first been asked to surrender (unless it is impractical and unsafe to ask them);*

- *it is clear that the person cannot be disarmed or arrested without first being shot; and*
- *further delay in apprehending the person would be dangerous or impractical.*

256. Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law and all relevant instructions and guidelines in the Police Manual. When firearms are issued, if time and circumstances permit, supervisors must draw officers' attention to the 'Fire Orders', which set out the circumstances in which Police officers may use firearms. These are printed on the inside cover of Police notebooks and are also stored in vehicle firearm security cabinets.

257. Police policy also states that *"There is no justification for firing at a suspect when they are no longer a threat to life. This applies regardless of the suspect's previous actions."*

Principles applying when offenders are armed

258. When dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:

- It is better to take the matter too seriously than too lightly.
- Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.
- Make every effort to prevent casualties.
- Caution is not cowardice. When the offender's actions permit, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.
- Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this.

CONTROL AND COMMAND

259. Police have adopted the Coordinated Incident Management System (CIMS) as the model for command, control and coordination of emergency incidents in New Zealand.

260. 'Control' refers to the responsibility for coordinating and directing the response to an incident. Control sets priorities and objectives and determines how best to implement them.

261. 'Command' refers to the authority that a Commander in the New Zealand Police lawfully exercises over assigned staff by virtue of rank or assignment. Command includes the authority and accountability for effectively using available resources and for planning, organising, directing, coordinating and controlling Police resources.

262. The CIMS model describes five response levels, depending on the scale of the event:
- Community (business-as-usual);
 - Incident;
 - Local (events affecting a Police district);
 - Regional (events affecting more than one Police district);
 - National (events requiring a whole-of-government response, such as the 2011 Christchurch earthquake, or a terrorist attack).
263. Different response levels are activated as the event grows in seriousness and scale. The lower-level response is supported and/or coordinated from the next-higher level, when this is activated.
264. A 'Controller' is responsible for coordinating and controlling the response at each level.
265. Controllers and Commanders must be competent, trained and qualified for their respective roles. Control and command is role rather than rank specific. Officers of a senior rank nominated to take a control or command role, should not automatically assume superiority, solely on the basis of rank or territorial responsibility.
266. Most incidents will be responded to following a report to the Communications Centre. The Shift Commander of the Communications Centre will take initial control or command until an operation or tactical commander in the field can safely be handed incident control at the appropriate time.
267. The District Command Centres (DCCs) exist to support or enable the control and command of critical incidents in the early stages. A relationship must exist between the Incident Controller and the DCC.

About the Authority

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 Colin Doherty.

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?

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.

THIS REPORT

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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