

# Non-fatal shooting following pursuit in Christchurch

## Outline of Events

1. On 23 February 2019, Police began pursuing a modified Holden car in the Christchurch area. The Holden's occupants fired shots at the pursuing Police car and at a stationary Police car parked on the side of the road. Police identified the Holden's registration number and subsequently abandoned the pursuit due to the firearms risk. None of the occupants were apprehended at this time.
2. On 25 February 2019, frontline staff received an email detailing the events on 23 February 2019, including descriptions of the Holden and one of the occupants (Mr X). The email raised concerns for staff safety and advised officers not to approach Mr X or the Holden, but to instead inform the Police Southern Communications Centre (SouthComms) if they encountered either of them.
3. At about 7.20pm on Tuesday 26 February 2019, a dog handler (Officer A) saw the Holden on Breezes Road, Christchurch. Officer A saw Mr X, exit the rear passenger seat, get into the driver's seat and drive away at speed.
4. Officer A began a pursuit and Police successfully deployed road spikes. Mr X continued to drive at a low speed and waved a shotgun out of the driver's side window. Officer A pursued Mr X into a residential area, where the Holden lost a tyre and slowly came to a halt near a park on a no exit road, about 11 minutes after the pursuit began.
5. Mr X got out of the Holden and fired shots at Police. Three officers returned fire until Mr X dropped his firearm and fell to the ground. Concerned Mr X may reach for his shotgun and fire more shots, Officer A directed his Police dog to bite Mr X's arm.
6. Police approached Mr X to administer first aid until paramedics arrived and took over. Mr X was subsequently transported to hospital, where he received treatment for gunshot wounds to his legs and chest, and a dog bite wound to his arm.

7. As a result of the events on 23 and 26 February 2019, Mr X was convicted of four charges of using a firearm against Police. He was acquitted of attempted murder.
8. Police investigated the officers' shooting of Mr X and determined that it was legally justified. The Police investigation included obtaining an external forensic examination of the scene, vehicle and firearms. All officers who were present at the time Mr X was shot underwent drug and alcohol testing by an external provider.
9. Police also notified the Authority of the shooting of Mr X, which the Authority independently investigated.

## The Authority's Investigation

10. The Authority interviewed Officers A, B, C, D and E and the pursuit controller.<sup>1</sup> Mr X declined to be interviewed. The Authority determined it was not necessary to summon Mr X for an interview, as the Police officers provided independent and consistent accounts of the pursuit, and the shooting and its aftermath were captured on video.
11. The Authority's investigator attended the scene and reviewed the relevant documentation, including a detailed map of the pursuit route and civilian video footage of the shooting and arrest.
12. The Authority identified and considered the following issues relating to the incident on 26 February 2019:
  - 1) Did Police comply with policy when arming themselves?
  - 2) Did Police comply with policy during the pursuit?
  - 3) Were Officers A, B, and D justified in shooting Mr X?
  - 4) Was Officer A justified in directing his Police dog to bite Mr X?

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<sup>1</sup> A pursuit controller supervises and co-ordinates the overall response to a pursuit, including the appropriate tactical options. In most cases, the pursuit controller role is taken on by the shift commander in the Communications Centre.

# The Authority's Findings

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

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13. At the beginning of his shift on 26 February 2019, Officer A armed himself with a Glock pistol. As required by Police policy, he read the 'fire orders' in his notebook outlining his personal responsibility when carrying a firearm and the circumstances in which he could use it.<sup>2</sup>
  
14. Officer A was working in the Canterbury Metro area as the late shift, general duties dog handler. A dog handler, who had been working during the 23 February incident, told Officer A the occupants of the vehicle had failed to stop for Police and a pursuit was initiated. During the pursuit, the occupants fired a shotgun at Police. The dog handler told him someone thought they had seen a muzzle flash, which is consistent with a shotgun. The pursuit was abandoned, then more shots were fired at a stationary Police vehicle.
  
15. Officer A said Police Intelligence had emailed frontline officers in the district, which he read the day before this 25 February incident. The email identified Mr X and said he was sought in relation to firing shots at Police and at a stationary Police vehicle. It said the pursued vehicle was believed to have been occupied by three people and the other occupants had not been identified. It also said Mr X was on active charges and bail for firing a BB gun at an associate's house (in a separate incident). The information said Mr X had a "*propensity to use firearms*" and "*he is likely to have access to firearms*". It also said Mr X and his vehicle should not be approached.
  
16. Officer A believed he was exposed to a high level of risk because he worked on his own, so armed himself with the Glock pistol to lessen the risk. His assessment, which led to him arming himself, included:
  - he was aware of the pursuit on 23 February, during which the occupants of a fleeing Holden had fired shots at Police in Christchurch City;
  - members of the public were exposed to the threat posed by the three occupants;
  - the occupants were still at large in the Canterbury metro area, and had not yet been identified, except for Mr X;
  - he could come into direct, unplanned contact with them at any time during his shift;
  - he may not have time to access a firearm from the Police car lock box if the situation escalated quickly and he needed to defend himself; and
  - he works alone.

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<sup>2</sup> See paragraphs 111 to 117 for Police policy on firearms.

17. Officer A intended to place his firearm inside the lock box in his vehicle if he was attending any jobs where carrying a firearm was not required.
18. The Authority accepts it was reasonable for Officer A to arm himself in these circumstances. However, he should have notified his supervisor or the Police Southern Communications Centre (SouthComms) of his decision to do so. To comply with Police policy, Officer A should also have worn ballistic body armour.<sup>3</sup> Officer A told the Authority he was aware of this but found it cumbersome to drive with and kept it within reach in case he needed it.
19. Officer B and Officer C (a senior sergeant) later armed themselves with Glock pistols, after hearing that Officer A had begun pursuing the Holden involved in the 23 February incident. Both reminded themselves of fire orders, and joined the pursuit, in separate vehicles. The Authority is satisfied they were justified in arming themselves as they were heading to an incident that may involve firearms. Both put on ballistic body armour, but only Officer B advised SouthComms he was armed, as required by policy.
20. The Authority acknowledge this was a fast-moving situation and the radio was very busy. There was urgent information that needed to be conveyed over the radio which understandably took priority over officers informing SouthComms they were armed.
21. Officers D and E had armed themselves with Glock pistols prior to this incident, having earlier attended an armed robbery. They notified SouthComms of their decision to arm. When Officer D heard that Mr X had presented a firearm during the current pursuit, he also armed himself with an M4 Bushmaster rifle. He retrieved two sets of ballistic body armour for him and Officer E and put them in the footwell of the front passenger's seat. (refer paragraph 44)
22. Police policy says officers must wear body armour when attending an incident where firearms could be present. Officer E said he did not put his body armour on as he became too focused on locating the fleeing vehicle. Officer D indicated that events were moving quickly and there was no time to put it on. Although the Authority appreciates the speed at which events unfolded, the officers should have taken the brief time required to put their armour on.

## FINDINGS ON ISSUE 1

Officers A, B, C, D and E were justified in arming themselves.

However, Officer A failed to notify his supervisor or SouthComms he was armed and breached Police policy by not wearing ballistic body armour.

Officer C failed to notify SouthComms he was armed.

Officers D and E failed to put on ballistic body armour.

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<sup>3</sup> When carrying firearms, officers must 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. Following this incident, Police held a debriefing with staff which covered off issues raised regarding not wearing HAP.

## ISSUE 2: DID POLICE COMPLY WITH POLICY DURING THE PURSUIT?

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### Officer A on patrol in Christchurch

23. At about 7.20pm, Officer A was on patrol in Aranui, Christchurch. He drove down Breezes Road and observed a Holden parked on the side of the road. The Holden had distinctive modifications which led him to believe it was the same vehicle involved in the pursuit three days earlier. As Officer A drove past, he could not see anyone in the Holden and believed it was unoccupied.
24. Officer A pulled over further down the road to check the vehicle's registration number on the Police database and confirmed this was the Holden from the 23 February pursuit. He immediately notified SouthComms, and drove back towards the Holden, parking about 20 metres away on the opposite side of the road. Officer A said he intended to secure the Holden (which was a crime scene), wait for backup, and await further instructions from SouthComms.
25. Officer A then observed Mr X, sit up in the backseat of the Holden. Mr X (who Officer A was unable to identify at the time) exited the rear right passenger door. Given his concern about the earlier pursuit, Officer A removed his pistol from its holster, and opened the Police car door.
26. Officer A sought cover in the door jamb and issued a verbal warning to Mr X, saying: "*Armed Police don't move*". Mr X ignored Officer A, got into the driver's seat, and accelerated heavily, speeding away at approximately 80 kph in a 50 kph zone.

### Initiation of pursuit

27. Officer A said he believed he needed to "*take immediate action without delay*" to stop the Holden. The Authority accepts Officer A was justified in pursuing for the following reasons:<sup>4</sup>
  - a) he believed:
    - i) the occupant may have been involved in the incident on 23 February 2019;
    - ii) there was a high likelihood of Police and public exposure to firearms;
    - iii) it was likely the occupant had used a firearm against Police during the incident two days prior, which is an offence punishable by a term of imprisonment;
  - b) he observed the Holden being driven in a dangerous manner; and
  - c) the visibility was good and the roads were dry.
28. Officer A activated his red and blue lights and siren to signal Mr X to stop.<sup>5</sup> When Mr X failed to do so, Officer A notified SouthComms that he was in pursuit. The SouthComms dispatcher issued the pursuit warning which Officer A acknowledged.<sup>6</sup> The shift commander was notified and

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<sup>4</sup> See paragraph 86 and 87 for relevant law.

<sup>5</sup> Officer A was a Gold class driver, authorised to engage in urgent duty driving and pursuits.

<sup>6</sup> See paragraphs 92 to 101 for policy on fleeing drivers.

managed the pursuit, issuing instructions to the dispatcher and communicating with the Armed Offenders Squad commander.

29. Officer A advised SouthComms that he was armed with a pistol and “[Fire orders] will apply for this job.” He gave his reasons for engaging in a pursuit and provided regular updates about his speed, location, the traffic volume and Mr X’s manner of driving.<sup>7</sup> Officer A also relayed concerns about Mr X driving through roadworks, driving on the wrong side of the road, and reaching around inside the car. Officer A later said he did not know what Mr X was reaching for but was mindful he may have firearms in the car.
30. The pursuit continued onto Anzac Drive at 80 kph in a 50 kph zone. At the intersection of Wainoni Road, Mr X drove through the intersection on an amber light on the wrong side of the road. Members of the public pulled over and stopped as he passed through a roundabout at approximately 70 kph in a 50 kph limit. Mr X passed heavy traffic, through a section of road under construction, weaving in between the traffic cones at approximately 20 to 30 kph.
31. Meanwhile, Officers B and C independently heard Officer A’s commentary on the radio and drove towards the pursuit.

### Deployment of spikes

32. Mr X had failed to stop and was driving dangerously around the Christchurch area in an attempt to evade Police. For these reasons (and the other reasons outlined in paragraph 19), Police had lawful grounds to use road spikes to effect Mr X’s arrest and prevent his escape in accordance with sections 39 and 40 of the Crimes Act 1961.<sup>8</sup>
33. Officer C drove to the intersection of Queen Elizabeth II Drive and Marshland Road and parked his car approximately 85 metres away from the intersection in the eastbound lane. He told SouthComms he was setting up road spikes in the location, which the dispatcher acknowledged.<sup>9</sup> Officer C crossed over Queen Elizabeth Drive II to set up the spikes in the westbound lane, then returned to his patrol car to take cover behind it.
34. The dual carriageway was coned off and reduced to one lane in each direction at the time, reducing traffic flow. The central island provided some protection to oncoming traffic, if Mr X were to swerve that way to avoid the spikes. Mr X was travelling at low speed on the correct side of the road.
35. The Authority is satisfied that Officer C conducted a sound risk assessment prior to using the spikes, and that no other, less dangerous, means of stopping the vehicle were available.
36. Mr X veered to the left as he approached the spikes, driving “half in the ditch and half in the cycle lane” on the far side of his lane.

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<sup>7</sup> The volume of traffic ranged from low to high throughout the pursuit, being mostly medium.

<sup>8</sup> See paragraphs 88 and 89 for relevant law.

<sup>9</sup> See paragraphs 102 to 104 for policy on ‘Tyre deflation devices’ (road spikes).

37. Seeing that it was safe to do so and believing that Mr X intended to avoid the spikes, Officer C ran to the undeployed spikes, turned them around and threw them into the path of the Holden. As he did this, the Holden briefly swerved towards him but was unable to avoid the spike strip. Officer C told the Authority that the Holden was about five metres away when it momentarily veered towards him. He believed this manoeuvre was intended as a warning to not throw the spikes and not an attempt on Mr X's part to hit him.
38. Officer C notified SouthComms that the Holden had been successfully spiked.

### Continuation of pursuit and presentation of firearm

39. According to Officer A, the Holden was *"heavily affected by those spikes"* but continued at approximately 30 kph in a 50 kph zone on Innes Road. Officer B followed behind Officer A as the secondary pursuit vehicle. At this time, he informed SouthComms that he was armed and *"fire orders apply"*.
40. Officer A saw Mr X briefly accelerate along Hills Road to approximately 80 kph and then brake heavily to turn left onto Ailsa Street. Officer A said Mr X was talking on his cell phone. Mr X continued travelling at approximately 50 kph.
41. Officer A requested permission from SouthComms to stop the vehicle. Before the pursuit controller could respond, Officer C told him: *"I'm happy if you give him a nudge if you can, if he's going slow enough on a corner."* However, Officer A then said he believed he had seen a shotgun in Mr X's left hand, so decided against nudging him. He informed SouthComms that he was *"reasonably confident"* Mr X had a shotgun, then the pursuit controller confirmed the Armed Offenders Squad had been paged.
42. Although 'nudging' a vehicle off the road is not a tactic that is currently supported by the 'Fleeing driver' policy,<sup>10</sup> it was reasonable for officers to consider using the tactic before seeing Mr X had a firearm, taking into account the speed at which the Holden was travelling and Officer A's level of skill.<sup>11</sup>
43. Officer A subsequently said he had seen Mr X present a shotgun out of the window and point the muzzle towards the pedestrian footpath on the other side of the road. Officer A told SouthComms he was therefore going to *"back off a little bit"* (50 metres) and requested an armed unit take over as a two-person unit would have the capability of defending themselves better. Officer B also witnessed Mr X presenting the shotgun out of the window and pulled back, remaining behind Officer A.
44. Meanwhile, Officers D and E (both armed with pistols) had parked at the intersection of Quinns Road and Shirley Road in case Mr X travelled towards their direction. On hearing Officer A's radio transmission, Officer D got his M4 Bushmaster rifle out and they began driving towards the pursuit. (refer paragraph 21)

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<sup>10</sup> Police are currently considering making this a tactic that will be available for officers to use.

<sup>11</sup> Officer A is trained in non-compliant stops as an Armed Offender Squad member.

45. Officer C sought clarification as to whether Officers D and E had a rifle, which they confirmed.
46. At 7.31pm, Mr X turned right onto Eveleyn Couzins Avenue, a residential street. The Holden came to a rolling stop near the end of the street as the front right tyre came off its rim.



*The final resting position of the Holden in Eveleyn Couzins Avenue.*

47. The Authority is satisfied that it was appropriate to continue the pursuit as Mr X posed a serious threat to Police and the general public. He was believed to be connected to a serious incident involving a firearm on 23 February 2019, and he had evaded Police, continually presented a firearm, and driven into a residential area in the early evening.
48. Police took reasonable steps to manage the risk posed by Mr X during the pursuit as:
  - a) Officer A provided clear, concise and useful information to SouthComms throughout;
  - b) communication between frontline staff to coordinate the Police vehicles involved was good;
  - c) appropriate caution was taken prior to, and after, Officer A confirmed Mr X had a shotgun;
  - d) the Armed Offenders Squad (AOS) were called to attend given the high-risk nature of the pursuit and risk of shooting;
  - e) Officer A appropriately declined to “nudge” Mr X off the road and dropped back when he saw the firearm; and
  - f) SouthComms advised officers they were not to engage with the vehicle but to maintain observations as Mr X drove towards the city centre.

## FINDINGS ON ISSUE 2

Officer A was justified in beginning and continuing a pursuit. He provided good commentary throughout and the pursuit was conducted in accordance with Police policy.



Officer C had lawful grounds to use road spikes to effect Mr X's arrest and prevent his escape in accordance with sections 39 and 40 of the Crimes Act 1961.

### ISSUE 3: WERE OFFICERS A, B, AND D JUSTIFIED IN SHOOTING MR X?

49. Eveleyn Couzins Avenue is a street with a cul-de-sac, lined with residential housing and apartment blocks on either side. At the end of the street is a river, a park, a public convenience block and a community building. Officer A followed the Holden into Eveleyn Couzins Avenue and saw members of the public walking on the footpaths nearby, who removed themselves away from the area when they saw what was happening.
50. When the Holden came to a stop, Mr X got out. Officer A said Mr X *"turned immediately and faced my direction"*. Officer A remained sitting in the driver's seat of his patrol car, approximately 20 to 25 metres from Mr X. He saw Mr X holding what he believed to be a pump-action shotgun in both hands at about waist height, pointing the muzzle directly towards him.
51. Fearing for his safety, and that of the general public in the immediate area, Officer A exited his vehicle, drew his Glock, 'actioned' it,<sup>12</sup> and stepped backwards towards the rear-right side of his Police car to take cover.
52. Officer A said he yelled *"Armed Police, drop the weapon!"* as loud as he could. He did not hear Mr X say anything or attempt to otherwise communicate, and Mr X *"showed no sign of surrender"*. Officer A kept watching Mr X but momentarily lost sight of him as he hid behind the Holden.
53. Officers B and C, in separate vehicles, arrived closely behind Officer A. Officer B exited his Police car and stayed behind the driver's door while firing. He later moved behind a nearby tree to get more cover and to attempt to get a better view of Mr X. Officer C approached the rear of Officer A's vehicle and took cover next to Officer A. Mr X fired the shotgun at Officer A's vehicle.
54. Three witnesses support the accounts of officers, saying they saw Mr X fire at Police before they began firing at him.

#### Shots fired by Officer A

55. Officer A said he saw the shotgun muzzle emerge from behind the Holden, and Mr X fired a shot towards him: *"I believed [Mr X] was firing a shotgun at me to kill me."* Officer A said he had *"an appreciation of what was around and behind [Mr X]. I could see a reserve area with no civilian persons visible to me in my arc of fire."* He aimed his pistol at Mr X's torso and fired *"a number of rounds"* at him. Officer A said he did not know if he had shot or incapacitated Mr X, nor did he know how many shots he fired. He then saw Mr X move back behind the Holden.

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<sup>12</sup> 'Actioned' refers to loading a round into the pistol's chamber.

### Shots fired by Officer B

56. Officer B said he shouted “*Armed Police, drop your weapon!*”, and immediately afterwards Mr X raised his shotgun to his shoulder and discharged two shots towards him and Officer A:

*“I saw the barrel pointed at me, I saw the flash and a puff of smoke and I braced myself as I thought that I was going to get hit. I believed that I was in danger of being killed or suffering grievous bodily harm and I considered that I had no option but to attempt to shoot [Mr X] to protect myself, my colleagues, and the public from being shot by him.”*

57. Officer B fired a shot at Mr X, who then concealed himself behind the car. Officer B then fired another two shots at Mr X as he reappeared from behind the car. Officer B said there was “*a volley of shots... [Mr X] was shooting at Police and Police were returning fire.*”

### Shots fired by Officer D

58. Officers D and E arrived on the scene and parked behind Officer A’s and Officer B’s vehicles. Both Officers D and E said they exited the car to the sound of gunshots. They ran forward to take cover behind the left side of Officer A’s vehicle.
59. Officer D said Mr X was only 30 metres away from Police: “*[Mr X] showed the intent to shoot and kill me and other Police staff as he fired first and continued to shoot at Police.*” Officer D was concerned that Mr X would be capable of causing grievous bodily harm or death because they were in such close quarters.
60. Officer D fired two rounds from his Bushmaster rifle at Mr X. He said he saw Mr X flinch and turn to face him directly. Officer D crouched down behind Officer A’s vehicle for cover, then heard a gunshot sound coming from Mr X’s direction but did not see the shot. He emerged from behind the car and aimed his rifle at Mr X, who subsequently crouched down behind the Holden.
61. Mr X again stepped out from behind the car with his shotgun held up in a firing position, with both hands high across his body, ready to move the butt of the gun to his shoulder to fire it. He was facing in Officer D’s direction. Officer D said at this point he believed Mr X was about to shoot at him or other Police officers. Officer D said he fired two bursts of two to three rounds at Mr X. Officer D was unsure whether he had hit Mr X, but saw him move away from his vehicle and crouch down holding the shotgun. Officer D then fired another shot which he believed hit Mr X in the leg. Mr X continued to hold his firearm in both hands. Officer D fired one last shot but did not know if it hit Mr X. Mr X then dropped his firearm, and from a sitting position, put both arms in the air and fell backwards onto the ground.

### Further shots fired by Officer B

62. At the same time that Officer D fired his final shots, Officer B fired three shots from his Glock, aimed at Mr X’s torso. He said the first shot was insufficient, but after the next two, Mr X fell down on the ground behind the car.
63. Officers A and B saw Mr X drop the shotgun on the ground between him and Police.

## Summary of shots fired by Police

64. Officer C (who had parked behind Officers D and E) said that, as soon as Mr X fell to the ground, Officers A, B, and D stopped firing. Officer C yelled “*hold, hold, hold*” with his fist in the air to indicate Police were not to fire further shots. The officers complied with these instructions.
65. The three officers had fired a total of 35 shots between them. There is 11 seconds of video footage taken during the shooting, during which the first 17-18 of the shots appear to be fired (including those fired by Mr X), though it is unclear exactly how long the full exchange of fire took.
66. There is some discrepancy in the number of shots the officers believed they each fired, and the amount they actually fired. 16 shots were fired in total by Officers A and B. Officer A could not recall how many shots he fired and Officer B recalled firing 3 shots. The outcome of the forensic analysis report suggests Officer A most likely fired 12 rounds and Officer B most likely fired 4 rounds. Officer D can recall firing about 10 shots, however, actually fired 19 shots. He kept shooting until Mr X was incapacitated.
67. It is not uncommon for shooters to have a distorted perception of the number of shots they have fired. Multiple researchers have pointed out that memory impairment is an inherent part of critical incidents.<sup>13</sup> Artwohl said: “*The memory of a highly stressful event can often be fragmented, disorganized, out of order, or contain gaps where the person has no memory at all.*” A study done by Klinger found that 33% of officers could not accurately recall the exact number of shots they had fired in a shooting incident, and that the accuracy of their recall decreased as the number of shots fired increased.
68. At least 16 shots struck the rear of the Holden, and four shots struck the grass. A bullet ricocheted off vegetation and went through a first-floor window of an empty room in the community building at the back of the park. Another bullet ricocheted off vegetation embedding itself in the wooden door of the public convenience. Two bullets left pockmarks on the outer brick wall. The sign at the entrance to the park was also hit three times. Shards of the remaining bullets were located next to and underneath the Holden, and in main scene area, further away from the Holden. Mr X fired two shots and was hit twice during the exchange of fire. No other person sustained an injury.

## Legal justification for firing shots

69. Officers A, B, and D said they had fired shots at Mr X in defence of themselves and others, in accordance with section 48 of the Crimes Act 1961.<sup>14</sup> To rely on this defence, the officers’ actions must be assessed on a subjective and objective basis. This assessment involves three questions:
  - 1) What were the circumstances as Officers A, B, and D believed them to be?

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<sup>13</sup> Artwohl, A, ‘No Recall of Weapon Discharge’ [2003] *Law Enforcement Executive Forum (volume 3, number 2)* and Klinger, D, ‘Police Responses to Officer Involved Shootings’ [2001] *Washington D.C.:U.S. Government Printing Office.*

<sup>14</sup> See paragraphs 90 and 91 for relevant law and paragraphs 105 to 110 for Police policy on the use of force.

- 2) Did Officers A, B, and D shoot at Mr X to defend themselves or others?
- 3) If so, was shooting at Mr X reasonable, in the circumstances as Officers A, B, and D believed them to be?

*What were the circumstances as Officers A, B and D believed them to be?*

70. Immediately before Officers A, B and D fired at Mr X:
- a) Mr X was approximately 25 to 30 metres away from them holding a shotgun aimed in the direction of officers A and B.
  - b) Mr X fired two shots in the direction of Officers A and B.
  - c) The officers suspected Mr X had been involved in another incident where shots were fired at Police three days earlier.
  - d) Mr X had ignored Officer A's earlier attempt to stop him and led Police on a pursuit for about 10 minutes, during which he presented his shotgun out of his car's window. He only stopped after Police successfully spiked his car.
  - e) They were in a residential area during daylight hours. Officer A had seen members of the public on the footpaths nearby and was concerned Mr X may shoot someone or take a member of the public hostage. Officers D said although he didn't see any members of the public, he was aware they could be in the area, and Officer B also believed members of the public could potentially be at risk.
  - f) Mr X could have fled on foot through the park but chose to fire shots at the officers. The officers believed Mr X needed to be stopped immediately.
71. Officer A believed Mr X was trying to kill him, and Officer B believed he was in danger of being killed or severely injured. Officer D saw Mr X firing at the officers who were already on the scene when he arrived, and believed he was trying to kill him and the other Police officers.
72. The Authority accepts that Officers A, B and D reasonably perceived that Mr X posed a risk to their own lives, and to the lives of other officers and civilians in the vicinity, as he was shooting at Police.

*Did Officers A, B, and D shoot at Mr X to defend themselves or others?*

73. Given the circumstances, the Authority accepts that Officers A, B and D were acting in defence of themselves, their colleagues, and members of the public.

*Was the force used reasonable in the circumstances as Officers A, B, and D believed them to be?*

74. Mr X was using lethal force to resist the Police, and Police responded accordingly by using their firearms to overcome and incapacitate Mr X. During interviews, Officers A, B, and D demonstrated that they were aware of their surroundings at the time of the shooting and determined that their lines of fire were clear.
75. Other, less lethal, tactical options such as using a Taser, pepper spray or baton were not appropriate given the distance between the officers and Mr X, and the level of threat Mr X posed. The Police dog was not available at this point as Officer A was not in a position where he could safely get the dog out of his vehicle. Warnings from Officers A and B that Police were armed did not deter Mr X from firing at Police.
76. Officer A also said that cordoning the scene to contain Mr X without further assistance was not an available option. Considering Mr X's actions and the speed at which the incident unfolded, the Authority accepts that Police did not have an opportunity to cordon, contain, or communicate with Mr X in an effort to deescalate the situation.
77. The Authority has considered other options the officers could have taken:
- a) If they had abandoned the pursuit Mr X could have continued to pose a significant threat to Police officers and members of the public, possibly for some length of time.
  - b) If officers disengaged with Mr X as soon as he stopped and presented the shotgun at them, when taking into account his earlier actions, it is likely Mr X would have still fired at Police. There was also the potential that Mr X could have gone into a nearby house and taken a member of the public hostage.
78. The Authority finds that the force Officers A, B, and D used was necessary, proportionate and reasonable in the circumstances. The officers had little option but to respond. They stopped firing once Mr X was on the ground and no longer holding his shotgun. In accordance with section 48 of the Crimes Act 1961, Officers A, B and D were legally justified in firing at Mr X in defence of themselves and others.

### FINDINGS ON ISSUE 3

Officers A, B and D were legally justified in firing at Mr X in defence of themselves and others.

### ISSUE 4: WAS OFFICER A JUSTIFIED IN DIRECTING HIS POLICE DOG TO BITE MR X?

79. The officers remained concerned that Mr X was still a threat, as he had a firearm within reach and had demonstrated that he was prepared to use it. Officers C, D, and E moved out from behind Officer A's vehicle with their firearms aimed at Mr X as he lay on the ground. They remained about 20 metres away from Mr X.
80. Officer A was satisfied that these officers could deal with "any other further lethal threat" at this time, so he secured and holstered his pistol. He then got his dog out of his patrol car.

81. Police officers began to slowly move towards Mr X in order to arrest him and provide first aid. Officer A said he believed Mr X was a threat to officers at this time. He decided to deploy his dog because:
- Mr X's firearm was still within his reach and he had shown he was prepared to use it against Police, which would also potentially endanger members of the public;
  - officers would need to cross open ground, with no cover, to get to Mr X, whereas the dog could cover the ground quickly, reducing Mr X's capacity to reach for the firearm;
  - Mr X could possibly have a secondary weapon on him as he had not been searched.
  - Mr X would have less opportunity to use two hands to take and operate his firearm, if the dog was holding one of his arms;
82. Officer A advised Officer C that he was going to deploy the dog as the officers moved forward, which Officer C acknowledged.<sup>15</sup>
83. Officer A released the dog when the other officers were about three metres away from Mr X. The dog ran to Mr X and bit him on the upper right arm. Officer B took hold of one of Mr X's arms, and Officer A immediately took hold of the dog's harness. Officer B applied a handcuff to Mr X's left wrist, then Officer A promptly removed the Police dog so Officer B could handcuff the right wrist. Mr X was thrashing about as officers began applying first aid.
84. The Authority is satisfied that Officer A was justified in using his dog to help effect Mr X's arrest under section 39 of the Crimes Act 1961 as:
- Mr X had just fired two shots at Police;
  - although Mr X was now on the ground, he still posed a threat to Police because his firearm was still within reach; and
  - Police were too far away to deploy other less forceful tactical options.

#### FINDINGS ON ISSUE 4

Officer A was justified in using his Police dog to help the other officers effect Mr X's arrest.

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<sup>15</sup> See paragraph 118 for policy on the use of Police dogs.

## Conclusions

85. The Authority commends those officers who took immediate action, providing first aid to Mr X. The attending paramedic acknowledged the quality care delivered by Police.

The Authority concluded that:

- 1) Officers A, B, C, D and E were justified in arming themselves.
- 2) Officer A failed to notify his supervisor or SouthComms he was armed and breached Police policy by not wearing ballistic body armour.
- 3) Officer C failed to notify SouthComms he was armed.
- 4) Officers D and E failed to put on ballistic body armour.
- 5) Officer A was justified in beginning and continuing a pursuit. He provided good commentary throughout and the pursuit was conducted in accordance with Police policy.
- 6) Officer C had lawful grounds to use road spikes to effect Mr X's arrest and prevent his escape in accordance with sections 39 and 40 of the Crimes Act 1961.
- 7) Officers A, B and D were legally justified in firing at Mr X in defence of themselves and others.
- 8) Officer A was justified in using his Police dog to help the other officers effect Mr X's arrest.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

20 August 2020

**IPCA: 18-1893**

## Appendix – Laws and Policies

### LAW

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#### Search and Surveillance Act 2012

86. Section 9 of the Search and Surveillance Act states that a constable may stop a vehicle without a warrant to arrest a person if the constable has reasonable grounds to suspect a person is unlawfully at large, or has committed an offence punishable by imprisonment, and is believed to be in the vehicle.

#### Crimes Act 1961

87. Section 198A of the Crimes Act states everyone is liable for imprisonment “*who uses any firearm in any manner*” against a constable acting in the course of their duty, and who uses a firearm to resist arrest or detention.
88. Section 39 of the Act provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use “*such force as may be necessary*” to overcome any force used in resisting the law enforcement process unless the process “*can be carried out by reasonable means in a less violent manner.*”
89. Section 40(1) provides for Police officers to use reasonable force to “*prevent the escape of that other person if he takes flight in order to avoid arrest*”, unless the escape can be prevented “*by reasonable means in a less violent manner*”.
90. Section 48 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.*”
91. Under section 62, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

#### ‘FLEEING DRIVER’ POLICY

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92. The overriding principle of the Police’s ‘Fleeing driver’ policy is that: “*Public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver.*”
93. Under the Police ‘Fleeing driver’ policy, the pursuing officers must carry out a TENR (Threat – Exposure – Necessity - Response) risk assessment when deciding to commence or continue a pursuit. The assessment required of officers includes consideration of the following:
- a) The ‘threat’, by any individual or action, which is likely to cause harm to Police in the course of their duties.
  - b) ‘Exposure’ refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.



- c) 'Necessity' is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
- d) 'Response' must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
94. The TENR risk assessment must weigh up:
- "... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond."*
95. During a pursuit, warning lights and siren must always be simultaneously activated. The Police Communications Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.
96. The 'Fleeing driver' policy outlines that Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so). They must advise the Police Communications Centre of their location, direction of travel, description of the fleeing vehicle, and reason for pursuit.
97. The Police Communications Centre transmits a 'pursuit warning' to all vehicles involved: *"... if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge."*
98. Officers are required to carry out risk assessments before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police car.
99. Fleeing driver incidents must be managed in the safest possible manner. A pursuit will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing. The fact that a driver is fleeing does not in itself justify engaging in a pursuit.
100. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the identity of the offender becomes known, the fleeing driver does not pose an immediate threat to public or Police, and they can be apprehended later.
101. Officers who decide to abandon a pursuit must notify Police Communications and immediately reduce their speed to increase the distance between the fleeing vehicle and their own. They should deactivate their lights and siren once below the posted speed limit and stop as soon as it is safe to do so.

#### 'TYRE DEFLATION DEVICE' (ROAD SPIKES) POLICY

102. Certified Police staff may deploy a tyre deflation device (TDD) if:
- no other, less dangerous means of stopping the vehicle are reasonably available;

- the deployment can be effected without unjustified risk to any person; and
  - with the authority of the Pursuit Controller as per the Fleeing Driver policy.
103. Officers may also self-authorise a deployment based on their TENR risk assessment, without approval from the Pursuit Controller, in certain circumstances, such as when non-deployment could have the gravest consequences (including immediate risk of serious injury/loss of life, risk of significant property damage or issues of national security). Officers who self-authorise must notify the Pursuit Controller as soon as possible, including the outcome of the deployment.
104. Deployment staff should continually assess the risk, choose a suitable deployment site and advise Police Communications of the intended deployment site.

## 'USE OF FORCE' POLICY

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105. The Police 'Use of Force' policy provides guidance to Police officers about the use of force. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest 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.
106. 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.
107. 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).
108. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely de-escalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.
109. 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.

110. 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.

## FIREARMS POLICY

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111. The New Zealand Police are not routinely armed. As such, it is recognised that firearms need to be made available for deployment in such a way that they are accessible, depending on the situation.
112. Employees who carry firearms because their assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the Tactical Options Framework must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable.
113. With the exception of specialist groups, employees must wear ballistic body armour when deploying to an incident where they believe firearms are or could be present. This includes circumstances where routine carriage of firearms has been authorised in response to a specific threat.
114. When dealing with an armed offender or an offender believed to be armed, these basic principles apply:
- An ongoing risk assessment should be conducted during the course of an incident.
  - It is better to take the matter too seriously than too lightly.
  - Caution is not cowardice.
  - When the offender's actions permit, focus on de-escalation, communication, and prevention, 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, act immediately to prevent this.
  - Treat all armed offenders, or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.
115. 'Fire Orders' are operationally specific instructions on the circumstances in which Police employees may use firearms.
116. Every Police employee issued with a firearm is personally responsible for ensuring they are thoroughly conversant with relevant law, particularly sections 39, 40, 41, 48, and 62 of the

Crimes Act 1961. Any employee who fires a shot must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so.

117. An offender must not be shot without first considering communication (asking them to surrender) unless it impractical or unsafe to do so. Officers must consider where there are less violent alternatives and whether any further delay in apprehending the offender would be dangerous or impractical.

## USE OF POLICE DOGS POLICY

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118. Police employee operating a Police dog are personally responsible for the use of force by the dog and therefore must:
- before releasing the dog, be satisfied that the use of force is justified in the circumstances;
  - unless it is not practical to do so, call on the person to desist;
  - ensure that the extent of the force used by the dog is kept to the minimum possible in the circumstances; and
  - where time and circumstance permit, plan actions and communicate with other staff present.

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

## THIS REPORT

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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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