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# Fatal shooting of Graeme Warren justified

## Summary of the Incident

1. On the evening of 5 December 2019, Police received a 111 call saying Graeme Warren had sent text messages to his son, Mr X, threatening to commit suicide.
2. Mr Warren was later found at his home in Kurow; he was in a depressed state. He initially spoke with Officer A but stopped communicating with him. Mr Warren was then seen inside his house carrying a rifle.
3. Officer A, B and C set up a cordon around the property and waited for the Armed Offenders Squad (AOS) and Police Negotiation Team (PNT) to arrive. However, before this could happen Mr Warren came out of his house with his rifle and threatened Officer C, pointing his rifle at him. Mr Warren then turned towards Officer B with his rifle pointing at him. Officer B fired one shot at Mr Warren, wounding him in the abdomen.
4. First aid was provided and Mr Warren was taken to Dunedin Hospital, however he died shortly afterwards.
5. Police notified us of the shooting and we conducted an independent investigation.

## Issues examined by the Authority

- Issue 1:** Was the initial Police response to this incident appropriate?
- Issue 2:** Was Officer B justified in shooting Mr Warren?
- Issue 3:** Did Police provide timely medical assistance to Mr Warren?
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## The Authority's Findings

6. The Authority found that:
  - 1) the initial Police response was appropriate;
  - 2) Officer A's decision to go on duty was appropriate;
  - 3) it was appropriate for Officer A, rather than the Police Negotiation Team, to initially communicate with Mr Warren;
  - 4) the officers correctly identified the increasing risks and asked the Armed Offenders Squad and Police Negotiation Team for assistance;
  - 5) officers were justified in arming themselves;
  - 6) Officers A, B and C acted appropriately in cordoning and containing the property;
  - 7) it was appropriate for the officers to make decisions collectively, given the situation;
  - 8) Officer B was legally justified in shooting Mr Warren in defence of himself and Officer C; and
  - 9) Police provided timely medical assistance to Mr Warren.

## Analysis of the Issues

### ISSUE 1: WAS THE INITIAL POLICE RESPONSE TO THIS INCIDENT APPROPRIATE?

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7. A friend of Mr Warren contacted Mr X to tell him they were concerned his father was suicidal, so Mr X repeatedly tried to call and text Mr Warren. Texts from Mr Warren led Mr X to believe he was intending to commit suicide.
8. Mr X tried to ring Officer A who was Kurow's sole-charge officer and a friend of them both. Mr X could not get hold of him, so called 111 at 9.04pm.
9. Mr X told the dispatcher he believed his father was going to try to commit suicide and that Mr Warren had sent texts to him saying he had "*had enough*". He said Mr Warren was not at his home and his Ute and dog were also not there. The dispatcher learned that Mr Warren:
  - had been depressed since losing his wife 10 years ago;
  - was due to turn 66 years old the next day;
  - had been at the pub earlier;
  - said the only thing he wanted was for his son to look after his dog;

- apologised for not having a plastic bag with him to contain any mess;
- had a firearms licence and Mr X thought he had a rifle with him; and
- had put the barrel of a firearm in his mouth approximately one year before.

#### Officer B

10. The Southern Communications Centre (SouthComms), dispatched Officer B from a nearby town as Officer A was on his rostered day off.
11. Officer B checked the information logged from the 111 call and noted Mr Warren had previously put a firearm barrel in his mouth and was thought to have a rifle with him. Officer B decided to arm himself so put on his ballistic vest and his Glock pistol. He put his M4 Bushmaster rifle in his Police vehicle. Officer B acknowledged fire orders applied and told SouthComms he was armed, as required by policy.<sup>1</sup>
12. Officer B headed to Kurow, planning to search for Mr Warren. During the drive he requested that PNT contact Mr Warren and try to find out where he was. He also requested cell phone polling information in order to help identify the search area. This showed Mr Warren was in the Station Peak area, where his wife's memorial stone is.
13. Officer B was told Mr Warren said he was in water which was over the bonnet of his vehicle (see paragraph 19). Officer B thought he may be able to locate the vehicle by the river if he could see its headlights from the Station Peak lookout.
14. The AOS Duty Commander was contacted by SouthComms to make him aware of the unfolding situation. He asked to be kept informed of any changes. PNT were activated and two officers headed into the Dunedin District Command Centre.
15. On his way up Station Peak, Officer B spoke to friends of Mr X who were also there searching for Mr Warren. At this point Officer B realised he was an acquaintance of Mr Warren, who he only knew by his nickname, "Squid".
16. A short time later, Officer B heard over the radio that Officer A had found Mr Warren at his home address, so headed there.

#### Officer A

17. Officer A and his wife, Ms Y, had been to a Christmas dinner at a local restaurant. At 10.05pm, Officer A contacted Mr X after realising he had missed two calls from him while they had been out. Mr X told him the situation and that Police were on their way.
18. Officer A immediately phoned Mr Warren and spoke to him for six minutes: *"He sounded very down and I was immediately concerned for his safety."* Officer A thought Mr Warren sounded tired of life and that he was intoxicated. Mr Warren believed his son was going to move away

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<sup>1</sup> See paragraphs 131 to 138 for relevant firearms policy.

from Kurow (which was incorrect) and that he would be lonely with only his dog for company. He said he just wanted to be with his deceased wife and seemed to have a plan to harm himself.

19. Mr Warren told Officer A he was driving around by the river and was a bit lost, and that water was coming over the windshield. Mr Warren was a fisherman so Officer A believed he would know where he was, but was choosing not to tell him. Officer A told SouthComms what Mr Warren had said. He also tried to contact Officer B but could not reach him on the radio.
20. Officer A says at this point he considered whether or not he should respond as he had consumed three beers between 6.30pm and 10pm, while at the Christmas dinner (discussed further in paragraphs 37 to 47). He was confident he could talk Mr Warren *“out of the dark place that he was in,”* so made the decision to go on duty.
21. Officer A’s plan was to collect Mr X and go down to the river to search for Mr Warren. He says he was not affected by the beers and was okay to drive, but asked his wife, Ms Y, to drive the Police vehicle for him as he was aware of what people who had seen him drinking at the restaurant earlier might think. He also believed it would be easier for him to get out and search the riverbed on foot if Ms Y was driving.
22. Officer A put on his uniform, went to Mr X’s house and spoke to him, and then updated PNT. Mr X came with Officer A to help search. Officer A thought it would be best to start at Mr Warren’s house, which was about four minutes away, in case he was there or had left a note.
23. Officer A arrived at Mr Warren’s property at 10:49pm. He could see the house was well-lit, and Mr Warren was in the kitchen. Officer A told Ms Y and Mr X to wait in the car on the street, and updated SouthComms.
24. Officer A then opened the gate and noted the surroundings. He was conscious Mr Warren had deliberately told him incorrect information about being at the river covered in water and noted he had hidden his truck around the side of the house. Mr Warren was heating up his dinner in the microwave and his dog was in the lounge. Mr X recalls Mr Warren turned off the lights as Officer A walked up to the house.
25. Officer A used the Police radio to ask Ms Y to drive Mr X back home. When she returned, about five minutes later, she sat in the Police vehicle outside the property.
26. Officer A spoke to Mr Warren through a sliding door at the front of the house for 10 to 15 minutes. Mr Warren came to the door and reiterated what he had told Officer A earlier on the phone, saying: *“I’ve had enough”*. Officer A told him: *“I can’t leave you alone when you’ve threatened to harm yourself, let me in and we can... talk about this and work things out.”*
27. Officer A says Mr Warren appeared despondent. He *“was not aggressive, he was not angry, but I noticed he wouldn’t look at me when he spoke to me...”*
28. Mr Warren and his dog went through a door leading out of the lounge, so Officer A could not see him for a while.

29. Officer A checked the doors to the house, but they were all locked. He also rang Mr X to see if he had a spare key, but he did not.
30. Under section 14 of the Search and Surveillance Act 2012, officers are able to enter a place without a warrant if they have reasonable grounds to believe someone's life is at risk.<sup>2</sup> Therefore, Officer A was justified in going onto the property, checking the doors, and asking Mr X if he had a spare key.
31. Officer A continued trying to communicate with Mr Warren. At one stage he sat at the outside table by the lounge sliding door, telling him he was not going to leave until he knew Mr Warren was safe. He advised SouthComms he was talking to Mr Warren through the window, and that Mr Warren would not let him into the house. Officer A thought Mr Warren would eventually let him into the house and they could talk *"like I've done a hundred times"*.
32. Officer A told SouthComms he did not have any immediate concerns for Mr Warren's safety at this point. He says Mr Warren was not behaving like someone who was about to harm himself: he was cooking dinner and did not seem to be drinking, he did not appear to have a firearm with him, and he was willing to talk to Officer A. Officer A could see Mr Warren at times but was communicating with him often enough that he was not concerned Mr Warren was doing anything to self-harm.
33. Officer A spoke with PNT who agreed it was best for him to keep trying to negotiate with Mr Warren as he had an established relationship with him, whereas PNT did not. Officer A was confident he had a good chance of talking Mr Warren out of harming himself and thought Mr Warren may not respond well if a lot of armed Police were present.
34. It was appropriate for Officer A to take the lead in communicating with Mr Warren. He was in a better position than PNT to persuade Mr Warren not to harm himself.
35. Officer A continued trying to talk with Mr Warren through the ranch slider, however by about 11:15pm, Mr Warren had stopped responding.

#### *Officer C*

36. Officer C headed to Kurow from a nearby town, arriving at the property at about 11.10pm. He recalls the house was in darkness. Officer A told him he had been speaking with Mr Warren through a window but Mr Warren had stopped talking with him by this time.

#### **Should Officer A have gone on-duty after consuming alcohol?**

37. Police policy says officers should not report for duty if they are under the influence of alcohol or affected by it.<sup>3</sup>
38. Police policy provides factors for off-duty officers to consider before they become involved in an incident. Although this does not strictly apply to Officer A as he went on duty, the same factors

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<sup>2</sup> See paragraph 125 for relevant law.

<sup>3</sup> See paragraphs 138 to 143 for relevant policy.

can be used to help determine whether or not Officer A acted appropriately. Off-duty officers should ask themselves:

- a) *“How serious is the offending. Is there a real danger of injury to any person or serious damage to property?”*
  - b) *“Will you put your own safety or the safety of others at risk if you intervene?”*
  - c) *“Does action need to be taken immediately to resolve the situation or can it wait for on-duty constables to arrive?”*
  - d) *“Have you consumed alcohol, used medication or is there anything else that could hinder you from safely and effectively intervening or assisting? Constables should recognise the impact this may have on their decision making.”*
  - e) *“Consider... seek[ing] a supervisor’s advice before intervening.”*
39. As the sole-charge officer of Kurow, Officer A regularly abstains from drinking alcohol as he is ‘on call’ for the entire day/night after working a shift. However, he was not on duty this evening. Over the course of the evening he consumed a 3.5% alcohol ‘stubbie’ and two 5% beers. He ate breads and dips, two main meals with large servings of roast chicken, roast lamb, ham on the bone, roast potatoes, pumpkin and other vegetables, and a sticky pudding.
40. Officer A is absolutely sure he was not affected by the alcohol. He did not consider using a breath testing device but is *“absolutely confident”* that if he had done so no alcohol would have registered due to the length of time since he had consumed the drinks, and the amount of food he had eaten throughout the evening.
41. Officers B and C say there was no indication whatsoever that Officer A had been drinking alcohol and they did not know until he told them (see paragraph 58).
42. The AOS Commander did not know Officer A had consumed any alcohol. He says when he spoke to Officer A on the phone during the incident, Officer A: *“was balanced, he was articulate, he was able to give me a full breakdown of the situation... There was nothing in that conversation that... gave any indication that he wasn’t using sound judgement....”*
43. Officer A did not consider telling a supervisor that he had been drinking before he went on duty, which would have been preferable. We appreciate that Officer A was in a rural location and a supervisor would not have been in a position to adequately assess his fitness for duty over the phone, however, they potentially may have instructed Officer A to do an alcohol breath test to help determine whether he was fit for duty.
44. The supervising sergeant, Officer D, says very soon after the incident, Officer A informed him he had drunk the beers before going on duty. He says Officer A appeared to be totally unaffected by the alcohol and: *“...having discussed it with [Officer A] after the event, I’m very happy the decisions he made around mitigating the risk and the perception that others might have were really well thought out....”*

45. As a general position, we do not think officers should place themselves on duty if they have recently consumed any alcohol and could be impaired. Alcohol affects judgement which makes it harder for individuals to determine to what extent they may be impaired. Having said that, we accept that there are situations where immediate action is needed and officers have to make a judgement call on their ability to help. This is particularly relevant when there are no other officers nearby that could intervene instead. We acknowledge that in rural areas there are often very few staff available and that additional staff have longer distances to travel to support officers based in small communities.
46. Officer A:
- believed there was a very real risk that Mr Warren would commit suicide and that he needed to be found urgently;
  - had the best geographical knowledge of the area out of the Police officers, and there was potentially a large area that needed to be searched; and
  - did not believe locating Mr Warren and talking to him would pose a safety risk to anyone. (He did not arm himself at this point.)
47. We accept that there was time for Officer A's body to process the alcohol and the quantity of food he had consumed during the course of the evening would have helped counteract any effects. The accounts of Officers B and C and Police members who were involved after the incident also indicate he was unaffected. We accept he was fit and able to perform his duty. He was also best-placed to help locate Mr Warren and talk to him.

### *Overall*

48. The initial actions of Police were appropriate as they immediately responded to concerns that Mr Warren was suicidal, took steps to locate him, and began searching for him. SouthComms, the AOS Commander, and PNT were alerted and monitored the situation closely, receiving regular updates and discussing actions with the front-line officers.
49. Police negotiators were ready to take over attempting to communicate with Mr Warren, and they are trained to engage with people in crisis, including those who are suicidal.

### **Did Officers A, B and C take appropriate actions at Mr Warren's house?**

50. Mr Warren's property is situated in a cul-de-sac. When viewed from the road, the house, which is fairly small, is set back off the road towards the rear left of the triangular section. The front of the house faces the road. There are two sets of sliding doors in the front, a single door on the left side, and another single door at the back of the house. Neighbouring driveways run down either side of the house and there is a row of trees along the back of the property. At the time of the incident there was a boat parked by the boundary fence towards the front of the property and a shipping container in the back corner of the section, on the right-hand side. The right fence was about 1.8 metres tall and made of a mesh-like material, making it difficult to climb over.

51. Officer A met Officer C on the gravel driveway and updated him. They then checked the back door to see whether Mr Warren may have left the house through it, confirming he was still inside the house when they saw a light flicker.
52. Officer B arrived at about 11.14pm. He recalls being told at this time that Mr Warren had been drinking and that he was inside his house, but Officers A and C did not know exactly where. Officer B says he did not believe Mr Warren posed a high risk to the officers as he had not threatened them, however:

*“I was uncomfortable that the house was in complete darkness and we could not see what was happening inside and thought with the possibility that [Mr Warren] had high powered hunting rifles there was a chance that he could be standing at a window with a firearm pointed at us and we wouldn’t know.”*

53. Officers B and C spread out to ensure Mr Warren did not leave the house, while Officer A continued trying to communicate with him.

#### *What did the officers do when they saw Mr Warren had a rifle?*

54. At about 11.21pm Officer B walked around the property shining his torch into some windows. He saw Mr Warren walking towards the laundry holding his rifle in one hand. Officer B says:

*“It was as if he was holding the barrel with his hand and dragging it behind with the stock dragging on the floor. I saw that it was a stock of a rifle and immediately my threat assessment went from fairly low key to ah oh, this is not good so it went to very high.”*

55. Officer B returned to the front of the house, telling Officers A and C: *“Firearm, firearm, firearm”*.
56. A request was immediately made for an ambulance to come and wait further down the street as a precautionary measure. Officer C also told Ms Y to move the Police vehicle further away from the house as a firearm had been seen.
57. Officer C went to get his Bushmaster rifle and Glock from his vehicle and Officer A retrieved his Glock. Officer C told Officer A to get his Bushmaster, however Officer A was more comfortable with just having his Glock. They both put on a hard armour plate (HAP) and complied with firearm policy.<sup>4</sup>
58. Officer C says a short time later he overheard Officer A telling Officer B he had been out to dinner and had drunk two beers earlier that evening.<sup>5</sup> Officer C told Officer A he was not aware he had been drinking and withdrew his direction for Officer A to arm himself with the Bushmaster rifle, but he said he was fine with Officer A to be armed with his Glock if he was comfortable carrying it. He says he made the judgement call based on his knowledge of Officer A and his observations of him that night.

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<sup>4</sup> Hard Armour Plate (HAP) systems: A metal plate to be worn over Stab Resistant Body Armour which provides addition protection of vital organs during incidents involving firearms.

<sup>5</sup> Officer C recalled hearing two beers; however, it was three beers.



59. The three officers evaluated the level of risk which had escalated with the sighting of the rifle. At this point Officer A had not had any communication with Mr Warren for 15 to 20 minutes and he was refusing to answer his cell phone. Officer B says he considered the possibility Mr Warren might attempt to shoot at them or force officers to shoot him as a way to commit suicide: *“In all honesty at that stage I still didn’t really believe he would and thought we would still be able to talk him into coming out...”* However, he says: *“...my training told me that I needed to think worst case scenario and keep myself and my off-siders safe.”*
60. The officers collectively decided they needed to cordon and contain the scene to ensure Mr Warren did not pose a risk to members of the public. Officer B says there was not much more they could do but *“if we can keep him inside at least we’re keeping everyone else safe.”*
61. The officers correctly identified the increased risks, and the decision to cordon the property and contain Mr Warren was appropriate.<sup>6</sup> The officers knew:
- Mr Warren’s state of mind was poor;
  - he had a rifle and likely intended to use it to harm himself; and
  - they were the only Police currently in the area.
62. SouthComms learned the local ambulance was unavailable so one was dispatched from Oamaru, about 45 minutes away.
63. Officer A requested the assistance of PNT and AOS. The AOS Commander instructed PNT to prepare to try and negotiate with Mr Warren, then headed into the District Command Centre, intending to call out the AOS squad.
64. Officers B and C positioned themselves around the perimeter of the house. Officer A continued trying to communicate with Mr Warren while also monitoring an area of the property.
65. A short time later Officer B went to his car to get his Bushmaster rifle then lay back down on the ground at the back of the property, behind a tree. He says he thought he may be there for a couple of hours, waiting for the AOS to arrive, so made himself comfortable in a relatively safe position. He assessed the risk to be fairly high at this point and was concerned that they did not know exactly where Mr Warren was. Mr Warren was turning the lights on and off, which made Officer B wonder what he was doing. Officer B says he found it to be *“quite disconcerting”*.
66. Officer A says he was becoming more concerned about Mr Warren’s welfare at this point because he could not see what he was doing in relation to harming himself. Using some stone cladding to provide some protection, he reached across to knock on the back door and *“basically pled”* with Mr Warren. He says he realised this was not overly safe but wanted to try to encourage him to come to the door. When Mr Warren did not respond, Officer A backed away, realising trying to communicate was not working.

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<sup>6</sup> See paragraphs 126 to 130 for relevant policy regarding the use of force.

### Were officers justified in arming themselves?

67. Police policy states that Police may arm themselves in circumstances where their assessment of a situation is that there is a risk of death or grievous bodily harm.
68. When Officer B armed himself he knew Mr Warren was believed to have a firearm on him and was a suicide risk. Officer B was justified in arming himself as a precautionary measure.
69. Officers A and C later armed themselves once they realised Mr Warren was armed. They were also justified in arming themselves.

### Was the command and control at the scene appropriate?

70. Officers A, B and C were all experienced officers at the time and knew each other. As the first officer to respond, Officer B initially had control of the incident. Officer A then took the lead when he found Mr Warren at the house and began talking with him. Once they were all on the scene, the three officers collaborated, making decisions together. Officer C says he had more supervisory experience and would have taken charge if necessary, however there was no need to do so as they were working well together and were following policy and procedure.
71. The officers correctly identified the initial risks and attempted to negotiate with Mr Warren. They further elevated the risks after seeing Mr Warren's rifle, working together to cordon and contain the scene as effectively as possible until AOS could arrive.
72. The officers maintained good communication with SouthComms and notified the AOS Commander and PNT early on, ensuring they were updated throughout the incident. The sergeant from Oamaru was also monitoring the incident from the station.
73. Overall, we consider the officers responded well to the nature of the incident. They took a precautionary approach given the risks involved with Mr Warren having a firearm. It was appropriate for all three officers to work together, given the situation. Their collective decision-making was considered and appropriate.

### FINDINGS ON ISSUE 1

The initial Police response was appropriate.

Officer A's decision to go on duty was appropriate.

It was appropriate for Officer A, rather than the Police Negotiation Team, to initially communicate with Mr Warren.

The officers correctly identified the increasing risks and asked the Armed Offenders Squad and Police Negotiation Team for assistance.

Officers were justified in arming themselves.

Officers A, B and C acted appropriately in cordoning and containing the property.

It was appropriate for the officers to make decisions collectively, given the situation.

## ISSUE 2: WAS OFFICER B JUSTIFIED IN SHOOTING MR WARREN?

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74. The officers positioned themselves around the perimeter of the property, so they could each see two sides: (as viewed from the front of the property)
- Officer B was at the back of the house, lying among trees, monitoring the right side and back;
  - Officer A was on the left side of the house, monitoring the left side and back; and
  - Officer C was on the right side of the house, monitoring the front and right side of the house.
75. Mr Warren's section is approximately 1140m<sup>2</sup> and fully fenced, with the house set near the back. When visiting the scene, our investigator noted that this meant that with only three officers present they had limited choices on where to position themselves if they were to be able to cover all sides of the house.
76. Mr Warren texted Officer A at 11.34pm telling him to go home and that he noticed his son was not concerned. Officer A sent texts assuring him Mr X was very concerned and said: *"Squid, you and I can sort this out, others will get involved soon which makes things harder."*
77. Officer B noticed Officer A would be visible to Mr Warren due to the light from his mobile phone. He told Officer A to take cover, so Officer A retreated behind a tree at the back, left side of the property. Officer A says:
- "I knew he was right... I misjudged it I admit that. There was no way in my mind that Squid was going to shoot me... I didn't see it getting to this stage at all, I didn't see like Squid shooting anybody, probably even himself. I felt that I was safe... I wasn't ready to give up on that communication at that point."*
78. Mr Warren's next text to Officer A, was sent at 11:46pm. He said:
- "I just want to be with his mum, [Officer A]. Go home to your family safe. I have no bones to pick with you mate. Please believe me, I do not wish to take anyone with me. But I will if they push it."*
79. Officer A says the text increased the level of threat and the risk to Mr Warren and the officers was now high. He stayed under cover and immediately began to text Officers B and C to tell them of the increased threat. He says he did not use the radio as Mr Warren might hear it. Mr Warren came out of the house before Officers B and C received this information.
80. It was around this time that the AOS Commander arrived at the District Command Centre, just before the shot was fired.

### *Officer C's account of the shooting*

81. Officer C was initially positioned by a boat near the front of the property, then moved further along to a wooden plank fence in order have a better view of the side of the house.

82. At about 11:50pm Officer C heard the loud click of the front (bedroom) sliding door unlocking and being pulled back. He could make out the figure of a person in the doorway but could not see any detail. The figure then went back inside and Officer C heard the door click when it was locked.
83. Less than two minutes later, the door was again unlocked and opened. Officer C saw Mr Warren walk out of the door with what appeared to be the muzzle of a long rifle above his left shoulder.<sup>7</sup> Mr Warren took a step or two before stopping about six to eight metres away from Officer C. He pulled the rifle off his shoulder into his hand and pointed it in Officer C's direction.
84. Officer C believes at this point Mr Warren posed the threat of death, or grievous bodily harm to him and to Officer B, who was also in the view of Mr Warren. However, Officer C says his "*brain just hadn't adjusted to the new reality*" so he continued considering Mr Warren to be a suicide risk who needed to be kept safe, rather than trying to defend himself.
85. Officer C immediately retreated backwards and sideways behind a large fence post. He knelt down, which left him about a metre behind the post. He did not have a view out. As he did this, Officer C heard the sound of the bolt of Mr Warren's rifle being worked, which led him to believe the rifle which had been pointed at him, was now definitely loaded.
86. Mr Warren called out "*f\*ck off*" to Officer C, telling him to leave. He then said: "*... either you're going to get shot or I'm going to get shot*".
87. Officer C says he tried to de-escalate the situation by telling Mr Warren that no-one wanted to shoot him. He said "*don't do it, don't do it*", while he tried to work out how to move from his exposed position.
88. Officer C saw a torch lighting up Mr Warren. He assumed the light was coming from Officer B who was on his right. He saw Mr Warren's rifle swing around towards the source of light. Although Officer C could not recall if the rifle was at waist or shoulder height, he could clearly see the barrel was horizontal and pointing at what Mr Warren was turning towards. He could not recall if any words were spoken.
89. Officer C heard a shot and saw Mr Warren drop his rifle and stumble back two steps before falling to the ground.

#### *Officer B's account of the shooting*

90. Officer B says he could not see Officer C but heard him moving. He did not see Mr Warren leave the house but heard his voice and saw movement to the left of him. Mr Warren stood at the front right corner of the house and said "*f\*ck off*" and words to the effect of "*you may as well go home*" in a calm, but fairly loud voice.

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<sup>7</sup> The muzzle of a rifle is the front end of the barrel where the bullet comes out.

91. Officer B then saw that Mr Warren was holding a rifle slightly higher than waist height and pointing it towards where Officer B believed Officer C was. His right hand was by the trigger and his left hand was under the barrel, in a position it could be shot from.
92. Officer B heard Officer C say: *"I can't do that. Don't do it."* Officer B thought Officer C was trying to negotiate with Mr Warren as his manner of speaking was conversational. Mr Warren again told Officer C to go home. At this point Officer C's tone changed and he said, *"Don't do it"*, or words to that effect. Officer B says: *"... it alarmed me because of the way that he was talking he wasn't negotiating; he was pleading to Squid."*
93. The change in tone caused Officer B to believe Officer C was begging for his life. He thought Officer C had maybe been unaware Mr Warren had come out and was caught in a position where he did not have his Bushmaster raised and could not move in case Mr Warren shot at him.
94. Officer B considered staying concealed and yelling *"Stop, armed Police"*, but decided it may make Mr Warren feel threatened and could possibly cause him to shoot Officer C immediately or take him hostage. He thought that it would be better to speak to Mr Warren on a more personal level. His intention was to call him Squid and hopefully enter into a conversation with him. If that was unsuccessful, he was going to say: *"armed Police"*. Officer B says: *"... this is all going through my mind at a gazillion miles an hour."*
95. Officer B decided it would be best to draw Mr Warren's attention away from Officer C. He stood up, turned on the torch at the end of his Bushmaster, and walked forward about a metre, saying *"Stop Squid"*. He was about 15 metres away from Mr Warren.
96. As a precaution, Officer B had his Bushmaster rifle in the ready position, with the stock on his shoulder and his finger on the trigger. He looked over the sights of his rifle, ready to raise it a fraction, aim, turn the safety off and pull the trigger, if it was needed.
97. Mr Warren immediately turned his entire body purposefully towards Officer B, with his rifle pointing straight at him. Officer B could see Mr Warren was holding his rifle at waist height, just above his hip, in a way that would allow him to shoot from the hip. Officer B recalled Mr Warren stood directly facing him and had his rifle pointing at him. Mr Warren did not say anything. Officer B says: *"I could see, and I will remember this until the day I die, the scope of his rifle reflected in the light."*
98. Officer B explained he does a lot of hunting, so knows what a scope looks like in different environments. He could see the tint or reflection of the scope. It was a large, perfect circle, which told him it was pointed straight at him. He says his training kicked in and he acted instinctively, having to make a split-second decision.
99. Officer B says, fearing for his life and Officer C's life: *"I raised my rifle, had [Mr Warren] in my sights, flicked the safety off and pulled the trigger all in one movement."*
100. Mr Warren dropped to the ground immediately.

### *Officer A's account of the shooting*

101. Officer A was texting Officers B and C about Mr Warren's latest texts when he heard "*a bit of a commotion*" on the right-hand side of the house. He did not hear what was being said. Someone, who he believed was Officer B, yelled loudly to put the gun down. Officer A heard a loud shot about one or two seconds later. He did not see what happened from his position.

### **Was Officer B justified in firing the shot?**

102. Section 48 of the Crimes Act 1961 states:<sup>8</sup>

*"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."*

103. To rely on this justification for his use of force, Officer B's actions must be assessed on the following three questions:

- 1) What did he believe the circumstances to be at the time he shot Mr Warren?
- 2) In light of that belief, did he fire the shot for the purpose of defending himself and Officer C?
- 3) If he did, was shooting Mr Warren reasonable in the circumstances as he believed them to be?

### *What did Officer B believe the circumstances to be at the time he shot Mr Warren?*

104. Officer B believed Mr Warren was going to shoot him or Officer C and that he had no other option but to fire the shot. He knew Mr Warren was armed with a rifle, intended to commit suicide using his rifle, and had stopped communicating with Officer A.
105. Officer B believed Officer C was in danger because he saw Mr Warren pointing his rifle in Officer C's direction and heard him say: "*... either you're going to get shot or I'm going to get shot*". He believed Officer C had been caught in a vulnerable position where he could not defend himself due to hearing him say "*don't do it, don't do it, don't do it*" in a pleading manner. Officer B's belief was so strong that he risked his own safety to try to divert Mr Warren's attention away from Officer C. We accept Officer B feared that Mr Warren posed the threat of death or grievous bodily harm to Officer C when he was facing him with his rifle pointing at him.
106. When Mr Warren turned towards Officer B and pointed his rifle straight at him, it caused Officer B to fear for his own life. We accept Mr Warren's actions caused Officer B to believe he now posed the threat of death or grievous bodily harm to him. It was at this point, when Officer B believed his own life was threatened, that he fired the shot.

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<sup>8</sup> See paragraphs 122 and 124 for relevant law.

*In light of that belief, did Officer B fire the shot for the purpose of defending himself and Officer C?*

107. We accept Officer B fired the shot in self-defence as a direct response to Mr Warren turning towards him and pointing the rifle at him. We also accept events were unfolding quickly and Officer B believed Mr Warren still posed a threat to Officer C.

*If he did, was shooting Mr Warren reasonable in the circumstances as he believed them to be?*

108. Officer B says there were no other appropriate tactical options available to him. He could not use a Taser or pepper-spray as Mr Warren was too far away from him. We agree there were no less lethal tactical options Officer B could have used that would have enabled him to defend Officer C and himself from Mr Warren.

109. Mr Warren was an experienced hunter who was familiar with firearms and aware of safe handling practices. He would have known that threatening Police with a firearm was likely to have dire consequences.

110. Although tragic, in the circumstances it was reasonable for Officer B to fire a shot at Mr Warren in order to defend himself and Officer C.

## FINDING ON ISSUE 2

Officer B was legally justified in shooting Mr Warren in defence of himself and Officer C.

## ISSUE 3: DID POLICE PROVIDE TIMELY MEDICAL ASSISTANCE TO MR WARREN?

111. Mr Warren was shot at 11:52pm. As soon as he fell to the ground, Officer C reported a shot had been fired and requested the ambulance come closer immediately. He ran to Mr Warren and saw the wound in his lower abdomen. He moved Mr Warren's rifle out of the way and applied pressure to the wound to stop the bleeding.

112. The only available ambulance was still 17 minutes away. A helicopter was immediately requested.

113. Ms Y heard the shot and ran to help, as she is an experienced doctor.<sup>9</sup> She took charge of Mr Warren's care and requested the Kurow on-call nurse also be called.

114. Ms Y says: "*[Mr Warren] was conscious and talking but agitated. Most of his speech was comprehensible and he obeyed some commands.*"

115. Officer A retrieved the first aid kit while Officer C continued applying pressure to the wound. Officer B got a pillow and duvet to keep Mr Warren warm and as comfortable as possible. He stayed by Mr Warren's head and attempted to reassure him.

<sup>9</sup> Ms Y took care to stay behind trees and bushes on the side of the road. Officer A then brought her into the property to help Mr Warren.

116. A local doctor arrived at 12.05am and worked with Ms Y.<sup>10</sup> Officer B took over applying pressure to the wound and Officer A assisted in providing oxygen to Mr Warren.
117. The ambulance arrived and transferred Mr Warren to the helicopter at about 1am. Officer C accompanied him during the flight. Mr Warren was unconscious upon arrival at Dunedin Hospital and died at 2:27am.
118. We are satisfied the officers acted quickly to provide medical assistance to Mr Warren, doing everything possible to save his life.

### FINDING ON ISSUE 3

Police provided timely medical assistance to Mr Warren.

## Subsequent Police Action

119. Police conducted an investigation which concluded the actions of Officer B were justified in the circumstances as they were in self-defence. Therefore, Officer B was not criminally liable for causing the death of Mr Warren.
120. Police conducted a Policy, Practice and Procedure Review which acknowledged that as officers in small isolated communities, Officer A, B and C are genuinely and heavily invested in their communities. The review concluded the officers conducted effective risk assessments and their responses were appropriate.
121. The Communications Critical Incident Review found SouthComms dealt with the incident in accordance with the law, Police policy and the Communications Centre guidelines. All efforts were made to provide immediate assistance for Mr Warren.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

8 December 2020

**IPCA: 19-1735**

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<sup>10</sup> The doctor was on duty that night, rather than the nurse Ms Y had requested.



## Appendix – Laws and Policies

### LAW

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#### Law relating to uses of force

122. Section 41 of the Crimes Act 1961 allows officers to use *“such force as may be reasonably necessary”* to prevent someone from committing suicide or acting in a way which is likely to cause immediate and serious injury to themselves or property.
123. Section 48 of the 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.”*
124. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

#### Law relating to entering a place to prevent suicide

125. Section 14 of the Search and Surveillance Act 2012 permits an officer to enter a place without a warrant and take action if they have reasonable grounds to believe there is a risk to the life or safety of someone and an emergency response is necessary.

### POLICY

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#### ‘Use of force’ policy

126. 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.
127. 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 (Threat, Exposure, Necessity and Response) assessment.
128. Police officers must 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).

129. 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 deescalating 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.
130. 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. 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

131. An officer may carry a firearm when they have assessed a situation as being within, or likely to escalate to be within, the death/grievous bodily harm range. They must advise their immediate supervisor and the Police Communications Centre of their decision to carry a firearm as soon as practicable, and also carry a Taser where one is available.
132. Officers must wear approved ballistic body armour, or hard armour plate (HAP) over stab resistant body armour (SRBA).
133. Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape where:
- *"... Police believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person; and*
  - *the offender flees to avoid arrest or escapes after arrest; and the flight or escape cannot reasonably be prevented in a less violent manner."*
134. Officers should not use a firearm unless it can be done without putting other people in danger.
135. An offender is not to be shot until all of the following conditions have been satisfied:
- *"they must have first been asked to surrender (unless it is impractical or unsafe to do so);*
  - *it is clear that the person cannot be disarmed or arrested without first being shot; and*
  - *further delay in apprehending the offender would be dangerous or impractical."*

136. 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.
137. 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.*
  - *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, Police must act immediately to prevent this.”*
138. Off-duty employees called back to duty *“must not report for duty if affected by alcohol... that may adversely affect their safety or the safety of others”*. If an officer is unsure if they should report for duty, they should consult a supervisor.

#### **‘Drug and alcohol’ policy**

139. Police require officers to *“not report for duty when under the influence of drugs or alcohol.”*
140. An officer should be tested for drugs and alcohol *“as soon as is reasonably practical after a critical incident”* where they have used force (such as a firearm) or had direct contact with a person who has died or received a significant injury.
141. An alcohol test is also required *“where there is reasonable cause to suspect that an employee has consumed and/or is affected by alcohol”*. The employee must be accompanied by a manager or supervisor throughout the testing process.

#### **‘Off-duty interventions’ policy**

142. Before deciding to become involved in an incident, off-duty officers must conduct an assessment of the risks (see paragraph 127). *“Sound judgement and discretion must be applied to determine whether it is appropriate to intervene or provide assistance in the particular circumstances.”*
143. The following factors should be considered by off-duty officers before they act:
- *“How serious is the offending. Is there a real danger of injury to any person or serious damage to property?”*

- *Are you adequately equipped or will you put your own safety or the safety of others at risk if you intervene?*
- *Does action need to be taken immediately to resolve the situation or can it wait for on-duty constables to arrive?*
- *Will your actions breach the law in any way?*
- *Have you consumed alcohol, used medication or is there anything else that could hinder you from safely and effectively intervening or assisting? Constables should recognise the impact this may have on their decision making.*
- *Consider calling the Communications Centre to request on-duty assistance or to seek a supervisor's advice before intervening.*
- *Are there any members of the public who can assist you until on-duty constables arrive?*

**Note:** *The key question is whether you can safely and effectively intervene or assist."*

# 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.

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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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