



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

# Poorly planned and executed attempted arrest of a man in Whangārei leads to unjustified use of firearm

## Summary of the Incident

1. Mr X was suspected to have been responsible for numerous burglaries in the Whangārei region, and Police had been actively looking for him. On 3 March 2022, Police saw Mr X driving, and followed him to a shopping centre, where he parked.
2. Police attempted to block Mr X's car with a Police vehicle to prevent him driving away. However, Mr X reversed out of his parking space, crashing into a vehicle that was parked behind him. He then drove at speed around the Police vehicle, while an officer fired a Taser twice at Mr X through the car window.
3. Officers ran after the car and caught up with it after it had crashed into other cars. An officer fired his Taser at Mr X through the car window, and another officer fired two shots from his pistol at the car to try and stop it. Despite significant damage to his car, Mr X drove away before abandoning it nearby and escaping on foot. He was arrested five days later in Auckland.
4. Police notified us of this incident pursuant to our Memorandum of Understanding.<sup>1</sup>

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<sup>1</sup> The Memorandum of Understanding specifies Police will notify the Authority about "any matter involving criminal offending or serious misconduct by a Police employee where the matter is of such significance or public interest that it places or is likely to place Police reputation at risk."

## The Authority's Findings

### Issue 1: Was the arrest of Mr X adequately planned and executed?

The arrest of Mr X was poorly planned and executed. Police should not have attempted to arrest Mr X at this time because of the significant risk of serious harm to members of the public, Mr X, and officers.

### Issue 2: Were Officers C and E justified in firing Tasers at Mr X?

Officers C and E were not justified in firing Tasers at Mr X. The use of Tasers increased the risk of injury to those present through Mr X losing control of the car he was driving.

### Issue 3: Was Officer E justified in shooting at the tyres of Mr X's car?

Officer E should not have shot at the car tyres, as this was not justified by the circumstances, and risked unnecessary harm to those present through the potential for ricochets or misdirected shots.

### Issue 4: Did Police investigate this incident adequately?

Police failed to adequately investigate the actions of officers involved in this incident.

## Analysis of the Issues

### ISSUE 1: WAS THE ARREST OF MR X ADEQUATELY PLANNED AND EXECUTED?

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#### What did Police know about Mr X?

5. At the time of this incident, Mr X had 12 outstanding warrants to arrest for burglaries he was suspected to have committed. Police in Northland had an operation underway to locate and arrest Mr X.
6. Mr X has a long history of theft and burglaries, and recent reports of dangerous driving and fleeing from Police. We were advised by Police that the main risk Mr X posed was from the manner of his driving. He had no convictions for violent offences. Mr X was known to be a heavy user of methamphetamine, and there had been concerns about his mental stability because of his drug use.
7. Officer A, who was the senior Police officer responsible for the operation to arrest Mr X, advised us that he was: *"Number 3 on our Top 10 as a staff safety risk, as well as a crime risk, for the crimes he was committing"*.

## Operation to arrest Mr X

### Morning briefing on 3 March 2022

8. On the morning of 3 March 2022, Officer A held a briefing to plan the search for Mr X. The briefing included members of a Surveillance Team<sup>2</sup> and a Support Team. The Support Team comprised of four officers (three of whom were AOS officers) in an unmarked Police vehicle. Their primary role was to provide back-up for the Surveillance Team.
9. During the briefing, Officer A instructed the Support Team that their secondary role was to arrest Mr X if they felt it could be done safely. Officer A also told the Support Team that it was important for them to immobilise Mr X's car because of the risks to others should he attempt to drive away. Officer A told us that he did not elaborate on the tactics the officers could use, and that he subsequently regretted that he was not more specific on this point during the briefing.
10. Mr X was also assumed to be armed, having been recently photographed riding a stolen motorbike with what appeared to be a rifle slung on his back.<sup>3</sup> Accordingly, the three AOS officers and members of the Surveillance Team were armed with Glock pistols.
11. A surveillance officer subsequently involved in the attempt to arrest Mr X, Officer B, provided us with further details of the risks associated with arresting Mr X:

*“Our tasking was to locate [Mr X] who was wanted for a number of burglaries in the area, or alleged burglaries in the area.*

*We had worked on him for a number of days and had actually been witness to him conducting a burglary at an address and we were also made aware that [the] burglaries had involved firearms and that it was believed he was a heavy methamphetamine user.*

*And so he was considered to be a high-risk target. As such we were armed for this, for this task. Our briefings include ... fire orders, given that we were armed, nature of the alleged offending of [Mr X] and then what our execution was going to be.*

*My recollection is that our supervisor said that the Investigation Team were looking for opportunities to safely apprehend [Mr X] ... and that the AOS Team would be used to effect that arrest.*

*Our role would simply be to identify or to place [Mr X] at locations or a location where AOS would determine whether they could safely effect that arrest.”*

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<sup>2</sup> Details of the Surveillance Team and their actions have been summarised in this report in order to protect Police surveillance tactics.

<sup>3</sup> The image was taken by a shop's CCTV camera on 21 February 2022, after a burglary in which Mr X was alleged to have stolen both motorbike and firearm that same day.

### *What happened when Mr X was found?*

12. Police were alerted to a car with a distinctive colour scheme being driven dangerously in the Tikipunga area of Whangārei. Mr X was tentatively identified as the driver, as members of his family lived nearby, and he was known to regularly visit this area.
13. At about 3.30pm, Police spotted the car, and the Surveillance Team followed it to the Tikipunga shopping centre car park. A member of the Surveillance Team positively identified Mr X sitting in the car's front passenger seat, with another person driving the car. The Surveillance Team reported this information over the radio to the Support Team.<sup>4</sup>
14. The driver of the target car got out and went into the supermarket adjacent to the car park. The Surveillance Team saw Mr X move from the front passenger's seat to the driver's seat, and reported this to the Support Team.
15. Mr X reversed into a parking space that was immediately next to an empty mobility parking space, keeping the car engine running.
16. A member of the Surveillance Team (Officer B) was observing from the entrance to the supermarket, in direct line of sight to where Mr X was parked.
17. Officer B told us:

*"I was in a position where I could see into the passenger's window which was slightly down, or down is my recollection. From video footage that I took I was confident that the passenger was [Mr X] and I communicated this to the team and my supervisor and I also sent through a couple of still images from my video at which time I believe the investigator confirmed or satisfied that that was indeed [Mr X].*

...

*[Mr X's car] eventually backed into an area that had a vehicle on [the] driver's side, on the right-hand side, and had a pedestrian right of way at the rear of the vehicle, and nothing parked on the passenger side. I communicated that to the team, my supervisor. My recollection is that the AOS were called to come into the car park and I gave directions as to where [Mr X's car] was parked.*

*I could see the [AOS vehicle] driving forward and I counted down the vehicles on [their] right and [they will] be able to see it in three, two, one, as it approached. I saw the [AOS vehicle] park across the passenger's side and nose of the vehicle and people deployed from the car."*

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<sup>4</sup> The Surveillance Team used a separate communications system which was being monitored by AOS and the Support Team, but was not being recorded. The communications system is secure and cannot be listened in to using a Police 'scanner'.

### *What happened when Police attempted to arrest Mr X?*

18. It was about 3.45pm on a Thursday. The CCTV footage of this incident shows that the car park was busy, with people going to and from their cars, supermarket employees collecting trolleys, children playing in the supermarket entrance adjacent to where Mr X was parked, and vehicles driving around the car park.
19. The Support Team Leader, Officer C, was sitting in the front passenger seat of the Police vehicle. With him were two AOS officers (Officer D and Officer E) and a non-AOS officer (Officer F). Officer F's role was to stay with the Police vehicle in the event all three AOS officers became involved in Mr X's arrest.
20. All four officers were in plain clothes. Officers C and E were wearing body armour with Police markings; Officers D and F were wearing nothing which identified them as Police officers.
21. The Support Team had planned the arrest before entering the car park. Officer C told us that, having spoken to the Surveillance Team, he understood that Mr X was parked backed-up against a hard barrier such as a wall, with a vehicle parked on each side of Mr X's car.
22. Officer C told us what they had planned:

*"[Officer E] and I and I were going to jump out and just go down both sides of the vehicle and [break] the windows if we had to, grab him, grab the keys, whatever we had to do.*

*And I don't know whether it was [Mr X's] driving before that, that had pushed me to like just seeing what kind of risk he actually was at that stage. Made me worry like we can't let this guy get away."*

23. Officer D, who was driving the Police vehicle, told us that he expected Mr X to be parked hard-up against a wall. He told us:

*"I was going to be nosing the front of my [Police vehicle] into the front of [Mr X's] vehicle, and a contingency if he was going to try and leave or flee, I was just going to nose him into the edge of the building to pinch him in to stop him from being able to [escape]."*

24. Officer F told us:

*"[Mr X has] come back to the [shopping centre] and we're just kind of just listening, seeing where he is, we're only just parked round the corner, the surveillance guys are like 'Yeah, he's just reversing into a disabled park,' and there was a bit of, we had a little bit of a discussion because we're all pretty familiar with the area and we all know there's disabled parks that are hard against the building and I couldn't think of any other ones that were there.*

*I don't know what the other guys were thinking, but that was my thoughts, and I thought 'okay, he's reversed into one of those, oh yeah, just sweet,' and the surveillance guy about this time was, he said: 'If you're gonna do it, do it now.'"*

25. According to Officer C's subsequent debrief report, Officer B advised them of Mr X's location, and told the Support Team: *"If going to do it, do it now ... AOS come now"*.
26. The Support Team did not report to the Communications Centre that they were intending to arrest Mr X.
27. As the Support Team drove through the car park, they slowed and looked to their left, to where they expected Mr X to be parked. However, moments later they spotted Mr X's car, which to their surprise was to their right, and not parked where they assumed it would be.<sup>5</sup>
28. Instead of Mr X being parked between two cars hard up against a wall, the Support Team were surprised to find that a vehicle was parked only on one side of Mr X's car, with an empty mobility parking space to the other side. In addition, there was no hard barrier behind Mr X's car as they had expected – just a pedestrian pathway and a car parked beyond that.
29. Officer C decided to continue with the arrest attempt, as he believed Mr X had spotted them and there was no opportunity to safely abandon the attempt. The Police vehicle stopped in front of Mr X's car, and Officer E immediately jumped out. Officer C's exit from the Police vehicle was delayed as he became entangled in his seatbelt.
30. Officer E says that he smashed the front passenger window of Mr X's car with a metal bar and shouted at him that they were Police. Mr X immediately reversed across the pathway and into the car behind him, which gave him enough room to drive out forwards. Mr X's car hit the rear of the Police vehicle as he drove past at speed, the rear of his car losing traction and sliding to the right. As Mr X drove off, Officer E fired his Taser twice at Mr X through the broken window. Officer E ran after Mr X's car, followed by Officer C who had by now managed to free himself from his seatbelt.<sup>6</sup>
31. Mr X accelerated forward about 20-30 metres, crashing, and damaging three further vehicles before coming to a brief stop. Officer E drew his pistol as he reached Mr X's car and pointed it at him through the windscreen, ordering him to stop. Officer E says that he considered shooting Mr X but decided not to fire as members of the public were in the line of fire.
32. Mr X did not surrender. Instead, he immediately reversed at speed, crashing into a car 10 metres behind him. By this stage Officer C had caught up. He fired a Taser once through the driver's side window at Mr X just as he started to drive forwards. The footage from the Taser camera shows that Mr X let go of the steering wheel as he was hit by a barb from the Taser.
33. As Mr X drove forwards, Officer E fired two shots from his pistol at Mr X's car: one shot aimed at the front passenger-side tyre; one at the back passenger-side tyre.<sup>7</sup>

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<sup>5</sup> In the CCTV footage, the Police vehicle is seen to slow to walking pace at the point where the Support Team officers say they expected Mr X to be parked. Officer C (as the front-seat passenger) is seen to point across to the right at Mr X's car, and the Police vehicle immediately accelerates towards Mr X's car and comes to a halt in front of it.

<sup>6</sup> Officer C removed his pistol and holster as they were entangled in the seatbelt, leaving them in the Police vehicle.

<sup>7</sup> Police subsequently found one bullet on the road surface. The Police investigation did not conclude whether or not the shots hit the tyres.

34. Mr X drove off at speed, followed by one of the Police surveillance vehicles. Mr X's car was found abandoned nearby, and he was eventually arrested in Auckland on 8 March 2022.

#### *What did Mr X think was happening?*

35. We interviewed Mr X. He says that he was being extremely vigilant that day as he knew Police were looking for him because of the offences he had committed. He also said that some dangerous criminals were looking for him, adding to his wariness.
36. Mr X says that, soon after backing into the parking space, a large dark-coloured vehicle came to a sudden stop in front of his car and – almost simultaneously – the passenger-side window was violently smashed, and he was struck by broken glass. He immediately feared for his safety. He reversed the car (he had kept the engine running for a quick 'getaway'), crashed into the car behind and drove away, colliding with other vehicles.
37. Mr X recalls at some stage during this incident he was shot and affected by a Taser, causing him significant discomfort (see paragraph 60).<sup>8</sup> He says he also heard gunshots being fired, and thought that they were aimed at him as he drove off.<sup>9</sup>
38. Mr X says that he had no idea at the time that Police officers were attempting to arrest him; they were not in uniform, and he cannot recall hearing shouted warnings at any stage during this incident. Mr X says he reacted as he did because he feared for his life. He says that, had Police attempted to arrest him in marked Police vehicles and in uniform, he would have surrendered immediately.

#### *Should Police have attempted to arrest Mr X?*

39. The Police policy on Arrest and Detention states that when Police plan an arrest:

*"Unless you are forced to act immediately in a situation, take time to plan your arrest and organise any necessary back-up. Take steps to ensure:*

- *The safe and humane arrest of the offender.*
- *Your own safety and that of your colleagues or other people who may be assisting you (e.g. inform the Communications Centre where you are and what is happening)."*

40. The Support Team had been given instructions to try and arrest Mr X if it was safe to do so. Officer C made assumptions based on what the Surveillance Team told them, and decided that it was feasible to block Mr X's car with their own Police vehicle and safely arrest Mr X.
41. Officer C stated in his 'Hot Debrief' report completed soon after the incident that, while communication with the Surveillance Team was "*hard to understand*," he was clearly told by the Surveillance Team this was a good time to attempt the arrest.

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<sup>8</sup> After he had escaped, Mr X found a Taser barb in his right forearm, and he showed a matching scar when he was interviewed by us. This Taser barb is also shown in the footage from Officer C's Taser shot.

<sup>9</sup> There is no evidence Police fired any other shots apart from the two at the tyres.

42. Officer B told us that the Surveillance Team assumed the Police team coming to arrest Mr X comprised of more than one vehicle and four officers. Officer B stated that, had he known the Support Team alone were coming to arrest Mr X, he would not have recommended that they do so.
43. There is a significant conflict in recollection and understanding between the two Teams about where Mr X's car was parked, and how this was reported to the Support Team:
- 43.1 For the Surveillance Team, Officer B says that Mr X's position was reported over the Police radio precisely as it was found when the Support Team drove in.
- 43.2 In contrast, the Support Team officers says the understood from what they were told by the Surveillance Team that Mr X was parked against a hard barrier such as a wall, with vehicles parked either side.
44. We cannot know for certain what was said between the Surveillance and Support Teams about where and how Mr X was parked, as the conversation was not recorded, and was not supervised by the Police general communications channel. Nevertheless, it is clear that the Support Team had an entirely different mental image of how Mr X was parked from what they encountered, and the situation was either miscommunicated or misheard.
45. However, we accept that the Support Team was told by the Surveillance Team that, if they were going to arrest Mr X, "*now*" was the time to do it.
46. To his credit, Officer C accepts that the decision to attempt the arrest was his and was wrong. He told us he should have abandoned the attempt the moment he saw that Mr X was not parked as he expected. When asked whether he would have attempted the arrest if he had known beforehand how Mr X was actually parked, Officer C told us: "*Oh, no way*". Officer C also advised that the Support Team was not "*set up for a vehicle assault*", including not having enough officers.
47. Officer C did not abandon the arrest attempt as, having to make a split-second decision, he believed they were committed to an arrest attempt. He thought they had been spotted by Mr X and did not want to miss an opportunity to arrest a person wanted for many offences.
48. The relevant Police policy on arrest and detention requires, by implication, the safety of bystanders should be considered. Using one Police vehicle and four officers to arrest a highly motivated offender who was known to drive dangerously and was parked with his engine running in a partially open space, was an error with potentially serious consequences.
49. Police policy also requires officers to contact the Communications Centre prior to an arrest attempt, which did not occur on this occasion. As a result, Officer A (who was in charge of the operation) was at the time unaware of the arrest attempt or the immediate aftermath.

### Conclusion

50. The first error made by Police was to even attempt an arrest of Mr X at this time. This should have been obvious at the time to the officers present. We find it hard to imagine a less



controllable environment, or one containing more risks, than a shopping centre car park at 3.45pm on a Thursday. The CCTV shows members of the public crossing pedestrian paths, driving around the car park, and loading shopping into their cars. Children were playing only a few metres away from Officer B as he communicated with the Support Team.

51. In whatever position Mr X was parked, or however many officers or Police vehicles were involved in Mr X's arrest, the busy and uncontrollable environment would have been the same. As Police stated they were concerned Mr X might have been armed and that his driving might harm someone, attempting to arrest him in a busy public car park was ill-advised at best.
52. While Officer A had given permission at the morning briefing to arrest Mr X if the opportunity arose, the Support Team did not report their intended actions, as is required by Police policy. The Support Team had an opportunity to stop and plan their arrest before they entered the car park, so that there was ample time to report their intended actions or discuss the matter with their commanders.
53. The next error was for the Support Team (and Officer C specifically as the Team Leader) to not immediately reconsider their plan when they found Mr X parked in an entirely different position from that which they expected; an error accepted by Officer C subsequently. Officer C accepts that he should have reviewed the plan at this point. The level of risk had instantaneously – and obviously – become significantly higher, and Officer C should have immediately abandoned the arrest attempt, irrespective of whether Mr X had spotted them.
54. In summary, the decision to arrest Mr X at this time and place should not have been made. It directly resulted in Mr X crashing into a number of cars, and set up a situation where officers fired Tasers and a pistol (discussed below). While Mr X drove recklessly, his actions were a direct consequence of the flawed decision by Police to attempt an arrest.

#### FINDING ON ISSUE 1

The arrest of Mr X was poorly planned and executed. Police should not have attempted to arrest Mr X at this time because of the significant risk of serious harm to members of the public, Mr X, and officers.

#### ISSUE 2: WERE OFFICERS C AND E JUSTIFIED IN USING TASERS AGAINST MR X?

55. Seconds after smashing the passenger-side window of Mr X's car with a metal bar, and as Mr X drove away at speed, Officer E fired a Taser twice at Mr X through the broken window.
56. Officer E described to us his firing of the Taser:

*"I put [the metal bar] into the windscreen and made the decision that's where it was staying and transitioned to Taser and then I deployed the Taser through the window, through the passenger window onto him in order to attempt to stop him from continuing to try and get away or to hurt anyone in the process including myself."*

*From there he's obviously continued and he's managed to get the vehicle and basically did a big skid out of the drive, out of the carpark where he's clipped the back of our vehicle and at that stage as he had come back around I deployed a second cartridge of Taser and this seemed to have no effect on him.*

*So the first one obviously it had nil effect. He was sort of still driving. The second one he was still, it still had – appeared to have no effect and he took off pretty quickly ....”*

57. Officer E stated in his subsequent Tactical Options Report:<sup>10</sup>

*“[Mr X’s] intent was to use whatever means necessary to escape and avoid arrest, including using his car to ram his way out and or [sic] hit officers and members of the public.*

*He was capable as he was extremely motivated. He was driving the vehicle and using it as a weapon.*

*He had the opportunity as he was driving the vehicle and trying to escape.”*

58. Immediately after Officer E fired his Taser, the CCTV footage shows that Mr X appears to lose control and crash into two cars – the first a glancing blow, the second head-on into the side of a parked car.
59. The subsequent Police analysis of the data collected from Officer E’s Taser concluded that it was “entirely feasible” that the first of Officer E’s Taser shots struck and affected Mr X.
60. Mr X describes how he was waiting for his passenger, the arrival of the officers, and the firing of the Tasers:

*“I kept looking at the door hoping [passenger] would hurry up, and then I looked up and there was a grey or black [vehicle], I can't remember what colour it was. I thought it was like dark green or black, dark grey and it had pulled up in front of me. Like when I got up and looked someone had smashed my window and I freaked out at the time 'cos the car was still running, I reversed back and I think I might have hit a car behind me or I, yeah, I reversed back and then I went to go turn to go that way, so there was a truck here, there was a white van that we had next to me, next to my car.*

*This truck was here so I went boom and the power steering on my mate’s car was fucked, so then I had to go turn this way and there was a car there, that’s when I got shot with the Taser.... I still feel a thing from it, like in my muscle, like it’s fucked, my arm was fucked.”*

61. Officer C fired his Taser once at Mr X after his car had reversed at speed into another vehicle and had just started to move forward. Police analysis of the data recorded by the Taser indicates that Mr X was not subject to an electric charge, although the footage recorded shows he let go of the steering wheel as one of the Taser barbs struck him in the arm. Officer C told us that he

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<sup>10</sup> An officer is required to complete a Tactical Options Report (TOR) when he or she has used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

fired as Mr X's car was temporarily stopped. Officer C said: "*I consider that quite an exceptional circumstance*", believing that Mr X posed a threat to the public by his driving.

62. Officers C and E say they rely on sections 39, 40 and 48 of the Crimes Act 1961 as justification for their use of force. These sections can justify an officer's use of force if a person is using force to resist arrest (section 39), is using force to escape or avoid arrest (section 40), or the force used by the officer is in defence of himself or others (section 48).<sup>11</sup>
63. At the time the Tasers were fired, Mr X had evaded the initial attempt to detain him, and was attempting to drive away. Therefore, we will discuss the officers' actions in the context of section 40 of the Crimes Act 1961.
64. Section 40 empowers Police to use "*such force as may be necessary*" to prevent the escape of someone who takes to flight to avoid arrest. The proportionality of an officer's use of force under section 40 should be assessed against two factors:
  - a) the seriousness of the offence for which the person is to be apprehended (and the consequent public interest in detaining them in order to bring them to justice); and
  - b) the likelihood and degree of risk the person poses if escape is not prevented.
65. Police use of Tasers is governed by policy. Police may use a Taser when they assess that a subject poses an imminent threat of physical harm to any person. The subject should be warned that a Taser is about to be used and given the chance to comply with Police instructions, if practicable in the circumstances.
66. Policy specifically warns against firing a Taser at a person driving a vehicle "where there is a risk of the vehicle or machinery going out of control and injuring the subject, occupants, or other persons".

#### *Did Officers C and E believe on reasonable grounds that Mr X was fleeing to avoid arrest?*

67. Officers C and E say they believed Mr X was trying to drive away to avoid arrest.
68. The CCTV footage clearly shows Mr X reverse his car, then accelerate forward and away from the Police vehicle as soon as it attempted to box him in. Mr X was clearly attempting to get away from whoever was trying to detain him, whether Police or other criminals wanting to harm him.
69. Consequently, we accept the officers reasonably believed Mr X was fleeing to avoid arrest.

#### *Was the officers' use of force to prevent Mr X's escape reasonable and proportionate when weighed against the offences for which Mr X was to be arrested, and the likelihood and severity of the risk that he posed?*

70. We accept there was an immediate need to arrest Mr X due to the seriousness of his offending. He had 12 outstanding warrants for arrest, had recently been photographed riding a stolen motorcycle, carrying what Police believed to be a rifle and had been involved in burglaries

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<sup>11</sup> Sections 40 and 48 of the Crimes Act 1961 are set out in paragraphs 106-107.

involving firearms. Police believed that there was a high likelihood of Mr X continuing to offend if he was not arrested.<sup>12</sup>

71. The CCTV footage of this incident, while short, is compelling. Mr X drove dangerously in an attempt to escape, as a direct result of Police actions. In so doing he put others (including officers) at risk of being run over. Mr X's behaviour therefore posed a sufficient risk to justify the use of a Taser in principle, according to Police policy. We accept that Mr X accelerated away from Police before a warning could be given.
72. The issue therefore is whether the use of the Taser was reasonable in these circumstances. Communications with Mr X had failed, open hand tactics would not have been feasible, and using pepper spray would have risked Mr X's driving becoming more erratic (and therefore more dangerous).
73. Police policy warns against the firing of a Taser at someone who is driving a car because of the risk of the car going out of control and causing injury. To illustrate the point, immediately after Officer E fired his Taser twice (with one of those Taser shots likely to have affected Mr X), Mr X drove into the side of a car containing six people with a glancing blow, then head-on into the side of another vehicle, narrowly missing pedestrians.
74. On the basis of Mr X's graphic evidence that he felt the effects of a Taser electrical charge, and the Police analysis that it was "*entirely feasible*" the first of Officer E's Taser shots was briefly effective, it is reasonable to conclude that Mr X's loss of control and crash into two cars can be at least partly attributed to the effect of the Taser fired by Officer E.
75. When Officer C fired his Taser, footage shows Mr X's hands came off the steering wheel. According to Police analysis of the Taser data, Mr X releasing the steering wheel was likely a reaction to the impact of one barb in his arm as it was fired from close range – not through an electrical charge.
76. Although Mr X did not crash again after Officer C's Taser shot, there was a very real risk that the act of firing the Taser could have caused Mr X to lose control at speed.
77. This case emphasises the importance of adherence to the Police policy on the firing of Tasers at people in control of a vehicle. In this case, a man desperate to escape in a busy environment, drove recklessly even before Tasers were fired; their use increased rather than reduced the danger.
78. Neither officer was justified in firing their Tasers in the circumstances.

## FINDING ON ISSUE 2

Officers C and E were not justified in firing Tasers at Mr X. The use of Tasers increased the risk of injury to those present through Mr X losing control of the car he was driving.

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<sup>12</sup> Mr X continued to offend until his arrest on 8 March 2022.

### ISSUE 3: WAS OFFICER E JUSTIFIED IN SHOOTING AT THE TYRES OF MR X'S CAR?

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79. As Officer C fired his Taser at Mr X, Officer E fired two shots from his pistol at Mr X's car: one shot aimed at the front passenger-side tyre, one at the back passenger-side tyre. Officer E told us that he believed the risk that Mr X posed to the public was "*significant*", and that he may kill someone because of how he was driving.
80. In justifying his firing at the tyres of Mr X's car, Officer E relied on section 48 of the Crimes Act 1961. He says he was defending himself and others from the risk of death or serious harm from Mr X's driving.
81. The Police position on shooting at the tyres of moving vehicles has been well-established for some years. According to policy, and the 2018 'Lessons Learnt' document specifically about shooting at moving vehicles, only in "*exceptional circumstances*" can an officer shoot at a moving vehicle.<sup>13</sup> This is because (as the policy states) it is extremely difficult to disable a vehicle by shooting at it, and the "*high probability or misdirection or ricochet [increases] the risk of causing death, injury or damage*". Officer E told us he was aware of both the Police policy and the 'Lessons Learnt' document.
82. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another. To rely on a defence under section 48, the individual officer's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
- What were the circumstances as Officer E believed them to be? (a subjective test)
  - Was Officer E's use of force against Mr X for the purpose of defending himself or another? (a subjective test)
  - Was Officer E's use of force against Mr X reasonable in the circumstances as the officer believed them to be? (an objective test)

#### *What did Officer E believe the circumstances to be?*

83. Officer E told us that in his view the situation he faced when attempting to arrest Mr X was of equal severity to the examples stated in the Police 'Lessons Learnt' document in which shooting at a moving vehicle may be permitted. The two examples given in that document for those exceptional circumstances are of a hypothetical murder suspect fleeing to avoid arrest, and the 14 July 2016 incident in France, in which a terrorist intentionally drove a truck into a crowd, killing 85 people and injuring 458 others.
84. We accept that Officer E had a genuine belief that Mr X may, as a result of his driving, cause serious harm to others. However, Mr X had not harmed or killed anybody at this point and had no criminal record of serious violence. His driving, while reckless, showed no evidence he was targeting either civilian pedestrians or officers (if indeed he had recognised them as Police).

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<sup>13</sup> *Lessons Learnt: Shooting at moving vehicles* (New Zealand Police, 2018).

85. Although we accept that Officer E had a genuine belief that Mr X's driving may cause injury to others, we do not accept Officer E genuinely perceived the circumstances on 3 March 2022 in the shopping centre car park were comparable with the examples stated in the Police 'Lessons Learnt' document. Officer E's contention appears more likely to be a subsequently applied justification, and an unwillingness to accept that his shooting at the car was wrong.<sup>14</sup>
86. In addition, had Officer E genuinely believed that the circumstances he was facing matched the severity of the events described in the 'Lessons Learnt' document, we believe he would have fired at the driver, not the car.

*Was Officer E's use of force against Mr X for the purpose of defending himself or another?*

87. Officer E says he believed there was a risk of death or serious harm to members of the public if he did not immediately act by shooting at the tyres to incapacitate Mr X's vehicle. Officer E says he was not himself at risk at the time he fired the shots.
88. We accept that Officer E fired the shots for defensive purposes.

*Was Officer E's use of force against Mr X reasonable in the circumstances as the officer believed them to be?*

89. Officer E believes his actions were reasonable and necessary in the circumstances. He argues that, as he aimed downwards at the tyres at close range, the risk of harm to anyone was negligible. This is also the view of Officer A, who was in overall charge of the operation and subsequently reviewed Officer E's actions. Officer A added in defence of Officer E's actions that he (Officer A) should have been more explicit about his orders in relation to incapacitating Mr X's car and that, due to this lack of clarity, Officer E could be excused for shooting at Mr X's tyres.
90. The seriousness of the incident in the car park was not comparable with the examples given in the Police document warning against shooting at moving vehicles. Mr X had been driving dangerously in his attempt to escape arrest, but he was mainly wanted for numerous burglaries – significant but not serious or violent crimes. In simple terms, the risks associated with shooting at the car outweighed the risks of Mr X's driving.
91. Officer A appears to have accepted some responsibility for Officer E's decision to fire at the car tyres. However, we do not accept a lack of explicit instructions in this case as mitigation for Officer E's actions, as every officer is responsible for their own use of force.
92. As stated above, shooting at moving vehicles is the subject of a specific Police document which sets out a very high threshold for when it is justified to do so. This document describes the risks associated with firing at a moving vehicle:

*"The small target area [firing at tyres] and the margin for error impose a high probability of misdirection or ricochet increasing the risk of causing death, injury or damage."*

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<sup>14</sup> In the subsequent Police employment investigation, Police advised that Officer E "[maintains] his view that his actions were justified in the circumstances."

*There may be some situations – such as the terrorist attack in Nice – in which the threat of death or GBH from the ‘weaponised vehicle’ is greater than the significant threat of GBH or death to innocent people from an officer’s shots. Even then, it is the driver of the vehicle that poses a threat and thus it is logical that any shots fired should be at the driver and not at the vehicle.”*

93. In addition, we do not accept that *not* shooting at a moving vehicle needs to be explicitly stated in a briefing. Officer A’s general instruction at the morning briefing to incapacitate Mr X’s car was adequate; there should be no need to tell an experienced AOS officer not to do what is excessive, well-known to be contrary to policy and practice, and dangerous.
94. While Officer E believes his shots – being aimed downwards – were ‘safe’, we still consider that the circumstances did not justify Officer E firing at the tyres. CCTV footage shows that numerous people of all ages were nearby and, when Officer E fired, Officer C was directly in line on the other side of Mr X’s car, barely 3-4 metres away. Despite Officer E’s confidence in his shooting ability, in this fast-moving and chaotic event, the chances of a ricochet or misdirected shot that causing injury or worse had to exist.
95. By the time Officer E fired, Police had lost control of the situation – the only tactic left available that would have been proportionate would be to allow Mr X to escape and attempt to arrest him at another time and place, under more controlled circumstances. We note that Mr X was followed by a Surveillance Team vehicle as he drove away, so firing at the car was not the only available option.
96. In summary, Officer E was not justified in shooting at Mr X’s car in the busy environment of a shopping centre car park in the mid-afternoon. To do so was unnecessarily risky, and not proportionate to the circumstances.

### FINDING ON ISSUE 3

Officer E should not have shot at the car tyres, as this was not justified by the circumstances and risked unnecessary harm to those present through potential ricochets or misdirected shots.

### ISSUE 4: DID POLICE INVESTIGATE THE INCIDENT ADEQUATELY?

97. On 4 April 2022, Police were directed by the Authority to investigate this incident and to include an assessment of the potential criminal liability of the officer who discharged his firearm at Mr X’s car.
98. By August 2022, while there had been a more general review of the incident (see below), despite prompting by the Authority, Police had not started any employment or criminal investigations into the actions of officers involved in this incident. Police subsequently started employment investigations into the actions of Officers C and E, but the delay in instigating these processes is unacceptable.

99. In addition, the Police investigation into the actions of Officers C and E concluded that, even though their actions were contrary to policy, they should not be sanctioned. In particular, although the Police investigation report concluded that Officer E's firing at Mr X was "*an extremely risky course of action to take*", it was excused. The Police investigation report concluded:

*"Despite there being a breach of the Use of Force Policy equating to misconduct under the [Police Code of Conduct], the mitigating and aggravating factors of the situation were weighed up and the Decision Maker determined that from an employment perspective no further action was necessary in relation to the conduct of [Officers C and E]."*

100. The Police investigation does not appear to have considered that the poor decision to attempt the arrest was the root cause of the subsequent chaos and unjustified use of force.
101. We strongly disagree with the outcome of the Police investigation that effectively supports the decisions of Officers C and E to fire Tasers and a pistol. These were clear breaches of policy that led directly from a flawed decision to attempt an arrest in a highly unsuitable environment, surrounded by many uncontrollable risks, and with inadequate Police resources.
102. In addition, we have been provided with no evidence that there has been any criminal investigation into Officer E's unsafe discharge of his firearm, even though this clearly constitutes at least careless use of a firearm. Police should have investigated the discharge of Officer E's firearm from the perspective of section 53(3) of the Arms Act 1983 (see appendix).

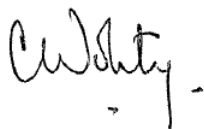
#### FINDING ON ISSUE 4

Police failed to adequately investigate the actions of officers involved in this incident.



## Subsequent Police Action

103. Officer A, the senior officer responsible for this operation, told us that the attempted arrest of Mr X was *“a cock-up from the minute we came into contact, until the minute we finished”*. This is an honest, and perhaps accurate, assessment.
104. Police subsequently performed a review of this incident, identifying a number of lessons that needed to be learnt. These include:
- Reminding officers of the policy on shooting at moving vehicles.
  - Reviewing the communications systems so that AOS operate on the same channel as the Surveillance teams.
  - Development of stronger Chain of Command and Forward Command procedures.
  - Training package for Surveillance Team members in working with STG and AOS Teams.
105. Officer A has also advised that combined operations have been held with the Surveillance Team since these changes were made.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

14 March 2023

**IPCA: 22-11045**

## Appendix – Laws and Policies

### CRIMES ACT 1961

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#### Section 40(1): Preventing escape or rescue

106. *“(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—*

*(a) to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or*

*(b) to prevent the escape or rescue of that other person after his or her arrest—*

*unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:*

*provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.”*

#### Section 48(1): Self-defence and defence of another

107. *“(1) 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.”*

### ARMS ACT 1983

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#### Section 53(3): Careless use of firearm, airgun, pistol, or restricted weapon

108. *“(3) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$4,000 or to both who, without reasonable cause, discharges or otherwise deals with a firearm, airgun, pistol, or restricted weapon in a manner likely to injure or endanger the safety of any person or with reckless disregard for the safety of others.”*

# 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. 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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