

Non-fatal shooting by Police at Kaiapoi justified

1. On the evening of Saturday 25 June 2022, Police shot a man (Mr Z) at a property in Peraki Street, Kaiapoi. Mr Z was confronting officers with a crowbar and knife. He suffered injuries to his hands, chest, abdomen and legs but survived.
2. At about 7.30pm a member of the public called Police and said a man had threatened him and his wife with a metal bar. Officers arrived, and the man advanced aggressively brandishing a knife and crowbar.
3. Police attempted to engage with Mr Z, and unsuccessfully tried to subdue and arrest him using pepper spray and Tasers. Police were able to direct Mr Z away from a busy part of Kaiapoi and maintained a presence around him as he walked into Peraki Street.
4. Mr Z entered the garden of a house at the end of a long driveway and attempted to escape over a fence. Officers confronted him, and he chased them to the front garden. Mr Z advanced on officers with a crowbar and he was shot nine times before he fell to the ground and was secured. He sustained serious injuries.
5. Mr Z was charged with various offences, including assault with a weapon and threatening to kill, but was found to be unfit to plead on account of his mental health.
6. Police notified the Independent Police Conduct Authority of the incident as required by section 13 of the Independent Police Conduct Act 1998, and the Authority conducted an independent investigation.¹

¹ Section 13 says: "Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused."

The Authority's Findings

Issue 1: Were Police justified in using force against Mr Z before he reached the property on Peraki Street?

Officers A and B were justified in firing their Tasers against Mr Z to defend themselves and others when they first confronted him on Williams Street.

Officers A, B, C, and D were justified in using pepper spray, Tasers and other tactics against Mr Z to prevent him from escaping arrest as he walked towards Peraki Street.

Issue 2: Was Officer E justified in using his Taser against Mr Z on the property on Peraki Street?

Officer E was justified in using his Taser against Mr Z on both occasions.

Issue 3: Was Officer F justified in shooting Mr Z?

Officer F was justified in shooting Mr Z to defend himself and Officer E.

Issue 4: Was Officer C justified in shooting Mr Z?

Officer C was justified in shooting Mr Z to defend Officer E.

Police provided adequate care to Mr Z after he was shot.

Issue 5: Did Police display appropriate command and control during the incident?

Police demonstrated good command and control throughout the incident.

Analysis of the Issues

ISSUE 1: WERE POLICE JUSTIFIED IN USING FORCE AGAINST MR Z BEFORE HE REACHED THE PROPERTY ON PERAKI STREET?

What happened?

7. At about 7.30pm on Saturday 25 June 2022, Mr Y and his family were sitting in their parked car on Williams Street, Kaiapoi.
8. Mr Z (who Mr Y and his family did not know) was sitting at a bus stop. He approached Mr Y's car carrying a metal rod in his hand and shook it aggressively. Mr Y quickly drove away, parked further along the road, and rang 111.
9. Officers A and B were parked in a nearby street when Officer B heard a Southern Emergency Communications Centre (SouthComms) radio transmission about a man with a "metal rod." The officers arrived within three minutes. Both officers saw Mr Z seated at the bus stop and approached him.

10. Officer A says she got out of the Police car and approached casually, unsure if this person was who they had been called about. Mr Z was immediately aggressive, telling her to “f..k off!” Officer A told us:

“I was only a couple of metres away, three maybe, four metres max away from him at that point when he’s pulled a, what I thought was a tyre iron, out of the bag and raised it up and told us to, ‘F..k off’ again. Yeah so, I’ve taken a few steps back as he’s starting to walk forward at – at me.”

11. Officer B told us Mr Z “got up off the bus stop and started walking towards us, shouting and swearing.” Officer B says he told Mr Z to stay where he was and that he was under arrest but was not able to tell him what he was under arrest for because Mr Z was advancing towards them.
12. Officer A drew her Taser while stepping backwards and challenged Mr Z to drop the weapon. The next sequence of events was captured on the Taser’s front-mounted camera (TaserCam), which also has an audio component. Mr Z did not lower what was in fact a crowbar (not a tyre iron) and continued to walk forward with the crowbar raised. Officer A says she feared being hit with the crowbar. She yelled a brief warning then fired her Taser at Mr Z. She continued to direct him to drop the crowbar.
13. The Taser was ineffective because the Taser probes which deliver the electric charge (through wires) could not penetrate Mr Z’s bulky jacket. Officer A saw there was no effect and Mr Z was continuing to advance, so she fired her Taser a second time at Mr Z, again with no effect.
14. The next sequence of events was captured on Officer B’s TaserCam. Mr Z swung his arm to remove the Taser probe wires as Officer B told him to “get on the ground.” Mr Z started advancing towards Officer B, while raising the crowbar. Officer B fired his Taser at Mr Z while backing away, but again the Taser had no effect.
15. Officer B continued retreating backwards as Mr Z stepped next to the Police car and swung the crowbar down onto the windscreen and roof. Both officers radioed for assistance, and events were also being relayed to Police by Mr Y who was still on the phone with SouthComms.
16. Officers A and B retreated to a safe distance of about five to ten metres. Mr Z then turned around and walked back past the bus stop, towards the centre of Kaiapoi. The officers also noticed that Mr Z had a large knife in his hand and relayed this over the radio.
17. Officer C, working as an acting sergeant, arrived at the scene as Mr Z was walking northwards on Williams Street towards a busy public area. Hearing over the radio that Tasers had been ineffective and considering there may be a need for other tactical options, he removed his Glock pistol (pistol) from the lock box in his car and holstered it. He advised SouthComms he was armed and that he had considered fire orders.²

² ‘Fire orders’ are instructions which set out the circumstances under which Police may use firearms, as set out in paragraph 160.

18. Mr Z walked towards the forecourt of a busy liquor store and the officers placed themselves in front and to the side of Mr Z to deter him from walking into the shop. Officers were calling to Mr Z to stop, drop his weapons and that he was under arrest. Mr Z replied abusively and continued walking, sometimes stepping towards an officer who would quickly back away to a safe distance.
19. Officer C says it was urgent for Police to stop Mr Z as he was heading towards the busier part of Kaiapoi. He confronted Mr Z with a Taser just before the liquor store driveway. Officer C told Mr Z he was under arrest and not to go any further. He warned Mr Z he had a Taser and on receiving no cooperation, fired his Taser. This was ineffective. Officers A and B used pepper spray against Mr Z, but he wiped it from his face, apparently unaffected.
20. CCTV footage shows the officers walking backwards as Mr Z approaches the liquor store forecourt. Officer C has his Taser pointed towards Mr Z, having just fired it. Mr Z swipes the Taser probe wires from his clothing. A member of the public who had just come out of the liquor store saw Mr Z and Police approaching, hurriedly gets into her car and drives away. As Mr Z approaches the store entrance the CCTV footage reveals he has placed the crowbar into the side pocket of a small backpack he was carrying, within ready access. The knife is in his right hand. Pepper spray residue is visible on Mr Z's shoulder.
21. The three officers were able to manoeuvre Mr Z away from the liquor store, back in the direction from which he had come. The three officers then closely followed and observed Mr Z as he walked back past the damaged Police car and turned right on to Ohoka Road.
22. Officer B unsuccessfully attempted to Taser Mr Z again. TaserCam footage captures Officer B telling Mr Z he is under arrest as Mr Z walks along the pavement. Mr Z replies: *"No, I'm not!"* before Officer B yells: *"Taser, Taser, Taser, get on the ground!"* He fires his Taser at Mr Z. Officer B reactivated his Taser four times, while repeating instructions for Mr Z to get on the ground. Mr Z pulled the Taser probes from his clothes and continued walking along the pavement, denying he is under arrest and telling Police to *"f..k off."*
23. With agreement, Officer B took Officer C's Taser as he had used up both his own taser cartridges. Officer C was armed with the pistol. TaserCam footage shows Mr Z initially standing on the pavement, telling officers they are not Police, and he is not under arrest. Officer B challenges Mr Z then fires the Taser. Mr Z starts walking quickly away from Officer B, swearing, and ignoring instructions to get on the ground.
24. Officer D, a sergeant, was at a Police station 11 kilometres away when advised of the incident. He started driving towards Kaiapoi while listening to the radio commentary. He was aware a Police dog handler was also en route. Prior to Officer D's arrival, the SouthComms dispatcher advised officers to maintain their distance, and *"we'll come up with a plan once Dogs arrive."*
25. When Officer D arrived, he saw three officers engaging with Mr Z on the north side of Ohoka Road. He described Mr Z as a big man and could see he had a knife in one hand, a can of alcohol in the other and a backpack. He did not know who Mr Z was.

26. At Officer C's suggestion, Officer D manoeuvred his Police car partially onto the pavement as Mr Z was approaching and drove slowly forward to block him and potentially surprise him into changing his behaviour and dropping the knife. The front bumper lightly "nudged" Mr Z's leg, but he walked around the Police car. This manoeuvre was captured on the TaserCam footage when Officer B used Officer C's Taser (see paragraph 23). Officer D's car approaches Mr Z at about walking pace, with headlights on. Mr Z walks backwards with his hand on the bonnet for several paces. Mr Z then appears to step to his left and walks along the driver's side of the car. The footage ends.
27. Officer D parked the Police car on the side of the road with emergency lights activated to warn members of the public. He approached Mr Z and the three officers on foot. He had his Taser and pepper spray attached to his tactical vest but was not carrying a pistol.
28. Officer D says he thought Mr Z was about his own age, so tried to talk calmly to him, asking him to put the knife down. Officer D, who was not presenting any form of weapon, says he was trying to de-escalate the situation and initially thought this was successful. Mr Z engaged briefly, but then Mr Z resumed walking along Ohoka Road, yelling abuse and telling the officers he wanted to go home. Officer D also said Mr Z would "surge forward with the knife" apparently testing the officers' reactions as they stepped back from him. Officer D believed there was a "very serious potential for one of us to be stabbed with that knife...."
29. Mr Z stopped by the entrance to an alleyway on Ohoka Road, and all officers told us they were concerned he may turn down the alley, which would have made following him more dangerous. Officer D, not knowing who he was dealing with, and not getting a name when he asked, took a short video of Mr Z on his Police-issue mobile phone. This shows Mr Z standing by the alleyway and not cooperating with Police who are requesting he drop the weapons. Mr Z is heard on the recording saying: "...I don't want any trouble, you're bringing trouble to me...."
30. Officer C, who was holding his pistol downwards, says Mr Z told him to put the gun away. Officer C says he tried to reason with Mr Z, advising he would put it away if Mr Z dropped his weapons, however Mr Z did not respond.
31. Mr Z continued walking along Ohoka Road. He kept changing which weapon he was holding in his hand, placing the other in the side of his backpack. At one stage, he dropped the can of alcohol. The four officers walked behind at a safe distance, updating SouthComms and again seeking an update on arrival of the Police dog unit.
32. Officer D confronted Mr Z, demanding he stop and talk to him. Mr Z reacted aggressively, and Officer D pepper sprayed him in his face. Officer D says Mr Z "just wiped it off his face."
33. Officer D told us his plan was for officers to keep a safe distance from Mr Z and try to stop him from encountering any members of the public. They would try to find an opportunity to detain him or follow him home, where he could be contained. He knew a Police dog unit was coming and a plan could be developed with use of the dog. The dog handler also represented additional manpower to help cordon and arrest Mr Z. Officer D also said that often, just the presence of a Police dog can act as an effective visual deterrent for an offender.

34. The Police dog handler, Officer E, was en route from Christchurch. Officer F was with him, working in a tactical support capacity. Both officers had just been at a separate incident that necessitated them being armed. Consequently, Officer E was armed with a pistol and Officer F with a Bushmaster M4 rifle (rifle). Both had considered fire orders.
35. While driving, Officer E advised officers dealing with Mr Z that if he was armed with a knife, he would not be releasing his dog at the offender. Officer E told us he said this early, so officers could plan accordingly. Officer D does not recall hearing Officer E's comment. Officer C heard it and understood that the dog would be available for tracking, and potentially as a last-resort tactical option to stop Mr Z in extreme circumstances.
36. Police advise that tactically it is unwise to release a Police dog onto a motivated and armed offender as this could result in a dead or wounded dog and no capability to use the dog for other purposes during the incident, such as scent tracking or offender takedown.

What behaviour was Mr Z displaying?

37. Officers told us that Mr Z was completely uncooperative and aggressive. Officers A, C and D thought he could be suffering from mental health issues. Officer C says:

"It did cross my mind [that he was suffering from mental health issues] but only briefly 'cos just on face value I thought probably intoxication 'cos he had the can in his hand, he was quite loud and sort of obnoxious and overconfident."

38. Officer D says his consideration for Mr Z's mental health caused him to try talking to Mr Z in a low-key manner, but Mr Z "... was just continually threatening us."
39. Officer A says she thought Mr Z may be affected by mental health issues or drugs, although acknowledged she had limited experience. She says Mr Z was "very purposeful" and he was mainly saying: "F..k off, I'm going home!" and "You're not the real Police!"
40. Officer B says he did not consider mental health, believing Mr Z was affected by drugs.
41. After Mr Z was later secured and taken to hospital (while in custody), he was found to be mentally unwell. We spoke to Mr Z about what happened, but he said he could not remember much about the incident.

Were Officers A and B justified in tasing Mr Z when they initially confronted him on Williams Road?

42. Section 48 of the Crimes Act 1961 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.³
43. 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:

³ Section 48 of the Crimes Act 1961 is set out in the Appendix.

- a) What were the circumstances as the officer believed them to be? (a subjective test)
- b) Was the officer's use of force against Mr Z for the purpose of defending himself or herself or another? (a subjective test)
- c) Was the officer's use of force against Mr Z reasonable in the circumstances as the officer believed them to be? (an objective test)

What did Officers A and B believe the circumstances to be?

- 44. The officers' accounts are set out in paragraphs 9-15.
- 45. Officer A says she attempted to engage with Mr Z, but he immediately became aggressive, removed a crowbar from his bag and threatened her.
- 46. Officer A drew her Taser and instructed Mr Z to put his weapon down. Mr Z ignored Officer A's instructions (which were recorded on the TaserCam's audio), and advanced forward as she backed away.
- 47. Officer A says she fired her Taser twice, without effect. She did so on both occasions to defend herself as she feared Mr Z would strike her with the crowbar. Officer A also says she acted to try and stop Mr Z from potentially harming members of the public, as it was also apparent that Mr Z was aggressive and unpredictable.
- 48. Officer B says he fired his Taser to incapacitate Mr Z, having seen that Officer A's discharges had not worked. Officer B also fired his Taser to protect himself and Officer A from Mr Z's actions, and to stop Mr Z posing a threat to the public.
- 49. Having viewed the TaserCam footage which supports their accounts, and spoken with the officers, we accept they believed Mr Z was advancing towards them with the raised crowbar, and he may hit them if they did not move back and stop his advance.
- 50. Further, the Taser discharges did not seem to affect Mr Z. He was also not responding to verbal instructions or warnings.

Did the officers act to defend themselves or others?

- 51. We accept that the officers acted primarily to defend themselves, and in Officer B's case, his partner. However, they were also mindful of the threat Mr Z posed to the public if he was not disarmed.

Was the officers' use of Tasers against Mr Z reasonable in the circumstances as they believed them to be?

- 52. Police policy permits officers to discharge a Taser at a person where their subjective, ongoing assessment of the situation gives them to believe the subject poses an imminent threat of

physical harm to any person.⁴ The officer should issue a warning before firing the Taser if practicable and safe to do so.

53. Mr Z was clearly advancing towards both officers in an aggressive manner, armed with a crowbar. His demeanour and body language indicated he intended to hit them with it, and the consequences of that could be fatal.
54. Both officers backed away to try to put distance between themselves and Mr Z and told him to stop and put the weapon down. He did neither, leaving them with few options to defend themselves in the immediate circumstances. The officers fired their Tasers three times in total, but each instance was in response to the fact that Mr Z continued to pose the same level of threat.
55. In our assessment, the officers' use of their Tasers was reasonable, and they were justified in acting in self-defence.

Were Officers A, B, C and D justified in using Tasers and pepper spray against Mr Z as he walked towards Peraki Street?

56. This section considers the following uses of force collectively:
 - Officer A's and Officer B's use of pepper spray and Officer C's use of the Taser against Mr Z as he approached the liquor store;
 - Officer B's use of Taser on Ohoka Road; and
 - Officer D's use of his Police car and pepper spray against Mr Z on Ohoka Road.
57. 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.⁵
58. Under section 40, the Authority must determine:
 - a) whether the officer believed on reasonable grounds that the person was fleeing to avoid or escape arrest; and if so
 - b) whether the officer's use of force to prevent the escape was reasonable and proportionate.

Did the officers believe on reasonable grounds that Mr Z was fleeing to avoid or escape arrest?

59. Officer B told Mr Z he was under arrest when he first approached him, prior to discharging his Taser. Officer C also told Mr Z to stop, drop his weapon and that he was under arrest. Mr Z did not cooperate and walked away from Police.

⁴ Police policy on the use of Tasers is set out in paragraphs 158-159.

⁵ Section 40 of the Crimes Act 1961 is set out in the Appendix.

60. Mr Z continued this pattern of behaviour while officers redirected him from the liquor store and followed him as he walked along Ohoka Road and into Peraki Street. Mr Z refused to accept that he was under arrest or that he was communicating with Police officers. Repeated uses of force did not make him stop and comply with instructions or deter him from his stated objective of going home.
61. All officers witnessed this behaviour, and Officer D also heard about Mr Z's behaviour over the radio before he arrived at Ohoka Road.

Were the officers' uses of force to prevent Mr Z's escape reasonable and proportionate?

62. This question requires us to consider the following factors:
- a) the seriousness of the offence which the officer reasonably suspected Mr Z to have committed; and
 - b) the consequences that the officer reasonably believed to be likely to occur if he did not prevent Mr Z from escaping, including:
 - (i) the effect of an escape on the likelihood of Mr Z being brought to justice (for example, loss of evidence or difficulties in identifying and/or catching Mr Z later); and
 - (ii) the nature and degree of risk of further offending that Mr Z posed.
63. Mr Z was under arrest already at this point for threatening Mr Y and his family, and officers with weapons and damaging a Police car. We consider the suspected offences were serious in nature.
64. None of the officers knew who Mr Z was, and he would not identify himself. Officers needed to take him into custody to learn his identity and potentially charge him. If the officers lost track of him in the dark, it would be difficult to find and arrest him later.
65. However, the immediate priority was to stop Mr Z from escaping from Police because he posed a considerable danger to members of the public who were in the area early on a Saturday night. All officers in interview told us that their main concern was keeping Mr Z away from the public, as his behaviour was irrational and unpredictable.
66. Mr Z had already approached and threatened a family with a crowbar for no apparent reason and may act in this way again. He was armed with a crowbar and a knife, both of which were potentially lethal weapons. Mr Z would not be reasoned with and was obviously distressed and confused by what was happening. He was also aggressive and would lunge towards the officers while holding his weapons. In these circumstances, we accept the risk that Mr Z may attack an officer or a member of the public was high, and the consequences would be serious.
67. As discussed above, Police policy justifies the use of Tasers when an officer subjectively believes that a person poses an imminent threat of physical harm to any person. Mr Z had threatened both officers and the public with weapons while walking along Williams Street and Ohoka Road, at times lunging towards officers, and continuously using aggressive language. Less forceful

options, such as communication and pepper spray (which Police policy prescribes may be used when a person is using physical action to resist Police, such as moving away), had not succeeded in stopping Mr Z and allowing him to be disarmed.⁶ The officers could not risk approaching and disarming Mr Z due to his aggression and the weapons he was holding.

68. Officers fired their Tasers at Mr Z several times with limited or no effect. Subsequent analysis of the discharges shows that Mr Z likely suffered brief and partial incapacitation of his arms twice. This was not enough to stop him or cause him to drop the weapons he was holding. We are satisfied that the officers kept discharging their Tasers because previous attempts had not been effective, and they had no other options to stop Mr Z at that point. Mr Z posed a genuine and immediate threat, and the use of Tasers to try and stop him was justified.
69. Officer D used his Police car to try to block Mr Z and made physical contact with him in the process. Officer C, who witnessed the manoeuvre, said Officer D's Police car rolled forward very slowly, and the contact made was more of a "nudge". The footage confirms that the contact was of a low level. We accept that Officer D used an improvised tactic in circumstances where options were limited. He drove carefully and slowly, so as not to harm Mr Z or nearby officers. In the circumstances, the tactic was justified.
70. Officer C was armed with a pistol during the interaction but did not point it directly towards Mr Z at any time. We accept that it was reasonable for Officer C to have his pistol in his hand as a precaution, given Mr Z was armed with potentially lethal weapons and he may need to intervene should Mr Z attack someone.

FINDINGS ON ISSUE 1

Officers A and B were justified in firing their Tasers against Mr Z to defend themselves and others when they first confronted him on Williams Street.

Officers A, B, C, and D were justified in using pepper spray, Tasers and other tactics against Mr Z to prevent him from escaping arrest as he walked towards Peraki Street.

ISSUE 2: WAS OFFICER E JUSTIFIED IN USING HIS TASER AGAINST MR Z ON THE PROPERTY ON PERAKI STREET?

What happened before Officers E and F arrived?

71. Mr Z walked into Peraki Street. The officers kept pace behind him at a safe distance. Officer A followed, driving Officer D's Police car in case it was needed.
72. Officer A stopped the car and Officer D got in, with the intention of trying to pin Mr Z against a fence. However, Mr Z suddenly turned left and walked down a shared driveway. The officers followed. Mr Z turned left again and entered the driveway of one of the houses.

⁶ Police policy on the use of pepper spray is set out in paragraphs 156-157.

73. Police were able to obtain CCTV footage from a nearby property which shows, from two different cameras and angles, what occurred at this house:
- Mr Z walked down the house's poorly lit driveway towards the backyard. Two vehicles were parked in this driveway, creating a narrow gap between one vehicle (a van) and the house.
 - Officer D parked his Police car at the front of the house on the shared driveway, with its emergency lights activated as an indicator to the arriving Police dog handler. Officer D got out and walked down the house's driveway, with Officer C following behind.
74. Officer C had a brief conversation with the house occupant, Mr X, who confirmed he did not know Mr Z. Officer C directed Mr X to lock his doors and stay inside.
75. Officer D says he saw an aluminium garage at the end of the driveway, with the garage door closed. Both officers heard a metallic bang, and Officer D says he thought Mr Z had entered the garage.
76. The officers walked through a gap between the garage and back corner of the house into the backyard, which was fully enclosed with a 1.8-metre-high corrugated iron fence. Officer D shone his torch into the narrow gap between the back of the garage and the fence and saw Mr Z hiding.
77. Officers D and C retreated a few steps, and Officer D called out to him: *"Stop, stay there!"* Officer D told us he hoped to contain Mr Z in the backyard until the dog handler arrived. However, Mr Z advanced towards Officers C and D, who backed away. Officer D saw Mr Z was holding the crowbar, so picked up a piece of wood from a nearby woodpile and threw it *"like a frisbee"* towards Mr Z, to deter him. The wood hit Mr Z on the shoulder, but he continued to advance. Officer C recalls Mr Z picking up two pieces of wood in his free hand. The officers retreated down the driveway.
78. A few seconds later, Officers C and D returned to the backyard because they did not want to lose sight of Mr Z. They saw him trying to climb over the fence into another property. They challenged him, and Officer C recalls seeing what he believed to be a knife in Mr Z's hand. Mr Z started running towards them and both officers ran down the driveway into the grassed area at the front of the house.
79. CCTV footage shows the two officers running out of the backyard and down the driveway as Mr Z advances towards them. Officer C explained to us that, even though he had his pistol, he decided to retreat rather than fire at Mr Z because he did not believe it was justified:

"There was no one immediately at risk... the necessity to shoot him there wasn't, wasn't there because we could still, we were safe, we had our distance, but he was still kind of trying to get out of the backyard sort of thing. So, no one was in the immediate vicinity to be harmed at that point in time."

What happened when Officers E and F arrived?

80. Officers E and F were briefly delayed in arriving as they were directed to the wrong street. However, once in the correct street and upon arrival, they parked at the far end of the shared driveway and Officer E got his dog out and put it on its lead. He had heard over the radio that Mr Z had moved towards the back of the property and thought he may need to track Mr Z should he escape the section.
81. Both officers told the Authority that they were aware from radio transmissions that Tasers and pepper spray had not affected Mr Z, he was still acting aggressively and still carried a crowbar and a knife. Both assessed that Mr Z presented a threat of serious harm or death to the public and Police.
82. The officers arrived at the front of the property as Officers C and D came running from the driveway and across the front garden (as described in paragraph 78). Officers E and F suddenly saw Mr Z approaching on the driveway and then move sideways across the front of the house and towards the sliding glass front door.
83. Both officers say they saw Mr Z holding the crowbar raised in his right hand, with the claw facing downwards. Officer E saw Mr Z was holding some wood in his left hand. Neither officer could see the knife.
84. Officer E told us he challenged Mr Z to drop his weapons, or he would release the dog, but Mr Z appeared to be in a “zombie state”. He ignored the challenge and faced Officers E and F. Officer E realised releasing the dog would be ineffectual as Mr Z could immediately incapacitate it with the crowbar:

“... he’s got that crowbar ready to go, like, he was loaded ready to swing it. I was thinking: ‘How am I best going to utilise my dog?’ And all I could see was if I send [the dog] now while we’re square on with him [the dog]’s just going to cop that crowbar right through the back of the head and we’re no better off, we’re worse off because we no longer have that tactical option.”

85. Although aware that Tasers had not worked up to this point, Officer E told us he thought he could use his Taser in conjunction with the Police dog to disarm Mr Z. He planned to target Mr Z’s legs, which were not covered by his thick padded jacket, making it more likely that Mr Z would feel the effect of the Taser and be briefly incapacitated. Then, he would send the dog to bite Mr Z, and move forward himself to disarm him.
86. Officer E’s TaserCam footage captured events over the next 20 seconds:
 - Mr Z is standing in a paved area in front of the porch. He is holding the upright crowbar out in front of him in his right hand, and a piece of wood in his left hand.
 - Officer E moves towards him and asks: “Where’s the knife?” Another officer directs Mr Z to drop the crowbar. Mr Z replies: “F..k off!” A dog is barking in the background.

- Officer E fires the Taser at Mr Z, from approximately five metres away. Officer E comments that it “*didn’t work!*”
 - Mr Z bends down and swipes the Taser wires and probes away from his legs.
 - Officer E takes several steps forward and demands: “*Drop it now!*”
 - Mr Z stands upright, and starts moving towards Officer E, raising the crowbar above his head.
 - Officer E fires his Taser again and the footage ends.
87. Officer E says he moved forward after first firing the Taser because he saw an opportunity to direct his dog to bite Mr Z’s arm. He took two steps forwards, but Mr Z started advancing. Officer F, who was approximately one metre to Officer E’s right, also says Mr Z started advancing towards them aggressively, while raising the crowbar above his head.
88. Officer E says he stepped back and fired the second Taser cartridge when Mr Z was within two metres of him, but it was not effective:

“...and he just kept coming at me still with the crowbar raised and he just closed in on me and that’s where I’ve just thought: ‘It’s game over.’ It’s like he didn’t even know that the dog was there it was – he was coming straight for me with that loaded up and all I could see was, ‘that’s about to come through my head.’”

Was Officer E justified in firing his Taser on both occasions?

89. Our understanding is that Officer E fired his Taser for different purposes on each occasion:
- to disarm Mr Z, so he could be safely arrested; and
 - to defend himself against Mr Z.

Was Officer E justified in using the Taser to attempt to arrest Mr Z?

90. Section 39 empowers Police to use “*such force as may be necessary*” to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.⁷ In order to be justified:
- the officer must believe (on reasonable grounds) that the person was using force (or the threat of force) to resist arrest; and
 - the officer’s use of force to overcome that resistance must be proportionate and reasonable in the circumstances.
91. Mr Z was using the crowbar and a piece of wood to threaten officers and prevent them from approaching him. He was also carrying a knife, concealed by that stage, but likely still accessible

⁷ Section 39 of the Crimes Act 1961 is set out in the Appendix.

to him. We therefore accept that Officer E reasonably believed Mr Z was under arrest based on his actions to this point, and he was using the threat of force to resist being taken into custody.

92. As noted in paragraph 52, Police policy permits officers to discharge a Taser at a person where their subjective, ongoing assessment of the situation gives them to believe the subject poses an imminent threat of physical harm to any person. Both Officer E's account, and the TaserCam footage confirm that Mr Z was holding the crowbar in a threatening manner. His body language was aggressive, and Officer E had just seen Officers C and D running away from him.
93. An officer directed Mr Z to drop the crowbar immediately before Officer E fired the Taser, but Mr Z did not drop it. Officer E also judged that he could not effectively release the dog towards Mr Z without first trying temporarily to incapacitate him with the Taser. It was a reasonable and justifiable attempt to disarm and arrest Mr Z using less-than-lethal tactical options. We accept that Mr Z was given adequate warning and an opportunity to comply before Officer E fired the Taser, and Officer E was justified in using it to attempt to arrest Mr Z.

Was Officer E justified in using the Taser to defend himself?

94. The assessment framework for section 48 of the Crimes Act is set out above in paragraph 432.
95. Officer E says that he had taken two steps towards Mr Z, who had been unaffected by the Taser discharge, in order to release the dog at him. However, Mr Z stood up and started advancing, with the crowbar raised. Officer E says Mr Z was within striking range, so he moved back, but was impeded by the van parked in the driveway. He says he believed he was about to be hit by the crowbar.
96. We accept that Officer E genuinely believed he was about to be attacked with the crowbar, and his retreat route was blocked. This is corroborated by TaserCam footage, and by Officer F's account. We accept Officer E's assertion that he fired the Taser to defend himself.
97. Arguably, Officer E should have kept more distance between himself and Mr Z. However, this does not negate Officer E's right to use reasonable force to defend himself in the circumstances he then faced.
98. Officer E was in a position where he could not retreat in time to avoid being struck. Mr Z was too close to Officer E for him to take the risk that the dog would effectively incapacitate Mr Z before swinging the crowbar at Officer E's head. Officer E's use of the Taser was therefore justified in the circumstances he believed he was facing.

FINDING ON ISSUE 2

Officer E was justified in using his Taser against Mr Z on both occasions.

ISSUE 3: WAS OFFICER F JUSTIFIED IN SHOOTING MR Z?

What happened?

99. Officer F had his rifle up but not aimed at Mr Z while Officer E confronted and fired his Taser at Mr Z the first time.
100. Officer F says that he saw Mr Z straighten from removing the Taser wires and he looked angry. His body position changed to a “*fighting stance*”. He pulled the crowbar over his head into a “*striking pose*” and started advancing quickly towards both officers from about five or six metres away, yelling: “*I’m gonna kill ya!*”
101. Officer F says he feared Mr Z was going to attack them with the crowbar. He was aware the van was behind them, so moved to the right and told Mr Z to drop the crowbar. He brought his rifle up into the aim position. Mr Z continued advancing towards Officer E, and Officer F fired two shots when Mr Z was between two and three metres from Officer E.
102. The shots hit Mr Z but had no apparent effect. Mr Z continued to move towards Officer E, who was moving backwards with his dog towards a gap between the van parked on the driveway and the side of the house. Officer F says he feared that Officer E was cornered:
- “I genuinely feared, I had genuine fear like I’ve never had before that [Officer E] was gonna be killed or injured severely.”*
103. Officer F moved again to give himself a safe angle of fire and rapidly fired four more times towards the side of Mr Z’s back. None of these shots had any effect on Mr Z. Officers C and D, watching from the front lawn, thought the shots had missed. Mr Z continued to advance towards the gap between the house and the van, where Officer E was.
104. Officer F says he thought he heard Officer E calling for assistance. He went to fire a third time, but his rifle would not fire. He called out that he had a weapon blockage and moved aside to rectify it.⁸
105. The neighbour’s CCTV footage captured the audio of these events (although the events were obscured by a tin fence). Officer F starts firing approximately two seconds after the second Taser discharge. He then fires the two volleys approximately one second apart. Officer E is heard yelling: “*Get on the ground*” as Mr Z advances towards him, and another officer (likely Officer F) yells: “*You up, you up?*” asking another armed officer to come forward to replace him as his weapon would not fire.

Were Officer F’s actions justified?

106. Officer F says he fired at Mr Z initially to protect himself and Officer E from Mr Z as he advanced with the crowbar, and then to defend Officer E as Mr Z continued to advance on him.

⁸ It transpired that as he moved position, Officer F had inadvertently flicked on the safety switch for the rifle, something he puts down to muscle memory as that action is required of officers during training with the weapon.

107. The assessment framework for section 48 of the Crimes Act is set out above in paragraph 42.
108. Officer F says he saw Mr Z advancing purposefully and aggressively towards himself and Officer E, with the crowbar raised in a striking position. Mr Z moved quickly and ignored instructions to drop the weapon. Officer F says he believed Mr Z was within two to three metres of Officer E with the crowbar raised when he decided to fire. He saw that his first shots did not stop Mr Z from advancing towards Officer E, who was in a precarious position, and decided to fire again.
109. Based on Officer E's similar account, the TaserCam footage and the CCTV audio (particularly the fact that only two seconds passed between Officer E's second Taser discharge and Officer F's first shots, indicating urgency) we accept that Officer F's belief as to the circumstances was genuinely held.
110. We also accept that Officer F fired all six shots to defend himself and Officer E.
111. We accept that Officer F genuinely perceived that Officer E was at serious risk of being struck in the head with the crowbar, and Mr Z appeared to be intent on carrying this out. He would not listen to Police instructions, was not affected by pepper spray or Tasers and appeared ambivalent to the presence of the Police dog, who could be heard barking on the CCTV and TaserCam footage. Officer E had limited space to retreat, and other officers still could not safely approach Mr Z. In these circumstances, Officer F had no less forceful options to incapacitate Mr Z other than to shoot him.
112. It was appropriate for Officer F to fire a second volley of shots after assessing and realising that the situation had not changed, and Officer E was still at risk of being killed. We consider that immediately after this, the same circumstances prevailed, and Officer F was justified in trying to fire again when his weapon failed to fire.
113. Police firearms policy requires a person to be asked to surrender before being shot at if safe and practicable. When Officers E and F first arrived at the house, it is possible to hear on the CCTV audio an officer warning Mr Z they are "armed". Consequently, Mr Z was given an appropriate warning.

FINDING ON ISSUE 3

Officer F was justified in shooting Mr Z to defend himself and Officer E.

ISSUE 4: WAS OFFICER C JUSTIFIED IN SHOOTING MR Z?

What happened?

114. Officer C, with his pistol up and aimed towards Mr Z's back, had moved past Officer F who was dealing with his rifle that would not fire. Officer C says he knew:
- Officer F's rifle was inoperable;
 - Officer F's shots had had no apparent effect;

- Mr Z was still walking purposefully towards the driveway where Officer E was retreating;
- the backyard was enclosed by a high fence; and
- Officer E's dog was unlikely to be able to disarm Mr Z before being incapacitated by the crowbar or knife, which Mr Z was probably still carrying.

115. Officer C says he did not know whether Officer E was armed with a firearm.

116. Officer E, still controlling his Police dog, had squeezed between the house and the van with his Taser trained towards Mr Z, despite it no longer being operable. Officer E realised Mr Z was focused on him:

"So, in that moment I'm just trying to survive, I guess. I've moved between the house and the van, gone through that threshold. ...I've just started calling 'blue on blue' because I was very aware I've just put myself between the staff, I've put the offender between staff and [myself] and he still kept coming at me."

117. 'Blue on blue' is a phrase used by officers to warn other officers of the potential for crossfire in urgent situations where firearms, Taser or pepper spray are deployed. Officer E says he called out to let other officers know where he was.

118. Officer E passed the van and moved across the driveway to the fence line. He dropped the Taser and unholstered his pistol, and prepared to shoot Mr Z who was still advancing. He then saw torches behind Mr Z, and knew it was other officers. He decided that he could not safely shoot towards Mr Z without a risk of hitting the officers behind. He moved backwards with his dog through the gap between the house and garage, and lost sight of Mr Z. This sequence of events is visible on the CCTV footage.

119. Officer C heard Officer E call out: *"Blue on blue."* Officer C moved forward, fearing that Mr Z would corner Officer E in the backyard, and Officer E would not be able to scale the fence before being stabbed. He told the Authority:

"...my fears were that he was going to get to [Officer E] and stab him up as such and obviously we all know how stabbings work as an end result with someone being killed so at that point my thought process was he has to be stopped before he gets around the corner of the house because otherwise we've got him rush at [Officer E], [Officer E] can't get out...."

120. Officer C also told us he did not want to risk shooting towards Mr Z should he reach the backyard, as Officer E would likely be in the line of fire.

121. Officer C says he saw Officer E shuffle behind the far corner of the house with his Police dog between his legs (see paragraph 118). Mr Z was still walking purposefully down the driveway *"as if he was going to go around the corner to go for [Officer E]."*

122. CCTV audio captures Officer C calling out: *"Stay where you are, stay where you are!"* as Mr Z walks quickly down the driveway. Officer C cannot recall saying this.

123. Officer C says he realised he was going to have to shoot at Mr Z, because he could not let him go around the corner and confront Officer E. He fired directly towards Mr Z's back. The first shot had no effect. He told Police during his investigation interview:

"[Mr Z] wasn't doing anything. I pulled the trigger again. [Officer E] was out of my sight, the male was still walking as if nothing had touched him. I pulled the trigger a third time. His body slumped around the corner a little bit."

124. The CCTV footage corroborates Officer C's recall of events. Officer E fires three shots, the first as Mr Z is approximately one metre from the back corner of the house, the second and third as he is passing through the gap between the house and the garage. Mr Z stumbles then falls to the ground after the third shot.
125. Officer E and his Police dog were approximately five metres from Mr Z's final position on the ground.
126. Officers brought Mr Z under control, called an ambulance, and provided first aid. Initially officers considered it necessary to handcuff Mr Z while they assessed him, but these were quickly removed when he displayed no further aggression, and his injuries were found to be serious.
127. Mr Z was admitted to hospital and underwent several surgeries. He eventually recovered from the gunshots, although has scars and physical effects. He has been diagnosed to suffer from a mental health disorder.

Were Officer C's actions justified?

128. Officer C says he shot Mr Z to prevent Officer E from being attacked.
129. The assessment framework for section 48 of the Crimes Act is set out above in paragraph 42.
130. Officer C's account of the circumstances is set out in paragraphs 114-115 and 119-123. Officer C's main concern was that Mr Z would corner Officer E in the backyard, and Officer E's only route of escape would be scaling the fence. He feared Officer E would not be able to do so before Mr Z reached and attacked him. He was not confident that the Police dog would be able to stop Mr Z given the lethal nature of the weapons he carried, and Mr Z's own determination. Further, he was concerned about being able to safely fire at Mr Z in the backyard if he was close to Officer E.
131. Officer C's account of events is consistent with what we see and hear on the CCTV footage. Further, Officer C had been engaged with Mr Z from the early stages of the incident, and was fully aware of his aggression and determination, and the lack of impact that tactical options appeared to have, including the use of firearms.
132. We accept that Officer C believed that Officer E was in immediate danger of serious injury or death from Mr Z. We also accept that he acted to defend Officer E from this outcome.

133. To be justified, Officer E's use of force must be reasonable in the circumstances as he perceived them to be. Force is reasonable if it is proportionate to the threat, considering the consequences if the risk materialises, the imminence of that risk and the likelihood of it occurring.
134. Officer C perceived that Officer E was in a dangerous position with limited options for escape. Mr Z was continuing to advance towards him with a crowbar and a knife, which were potentially lethal weapons.
135. Mr Z displayed increased aggression towards Officer E following Officer E's attempt to Taser him. Throughout the incident, Mr Z had displayed extreme determination to achieve whatever goal he had in mind, whether it was returning home or resisting Police. Now it appeared he was focused on Officer E. No tactical options, including being fired at, had stopped Mr Z moving towards Officer E. Consequently, it was likely that Mr Z would seriously harm Officer E if he was able to get within range.
136. Although Mr Z had not reached the backyard when Officer C shot at him and therefore was not yet within striking range of Officer E, Officer C explained that he needed to stop Mr Z before he reached the backyard for the reasons described in paragraph 130. We accept this. Further, by firing when Mr Z was still on the driveway, the garage in the background provided a safer direction of fire for Officer C, preventing bullets entering other neighbouring properties.
137. We accept that Officer C had no other tactical options available at this stage, other than to shoot Mr Z. Officer E had not released his Police dog or taken a shot while Mr Z advanced, and Officer C did not know if he was armed. Officer C knew that Tasers had been ineffective against Mr Z. He was the only officer suitably equipped and in a position to act, even though the consequences of firing could be lethal to Mr Z.
138. We conclude that Officer C's actions were reasonable and proportionate in the circumstances. Officer C considered his options and realising that firing at Mr Z was necessary to protect Officer E, decided to do so in the safest possible way.
139. We also accept that Police gave Mr Z adequate first aid after he was shot, and ensured he received medical treatment as soon as possible.

FINDINGS ON ISSUE 4

Officer C was justified in shooting Mr Z to defend Officer E.

Police provided adequate care to Mr Z after he was shot.

ISSUE 5: DID POLICE DISPLAY APPROPRIATE COMMAND AND CONTROL DURING THE INCIDENT?

140. This incident arose without warning and ran for approximately seventeen and half minutes from the time that Mr Z attacked the Police car, until he finally collapsed. There was time for a planned Police response, although only as events unfolded.

141. Officer B provided the first update over the Police radio, outlining the offender had a crowbar. He suggested Officer C arm himself and that fire orders will apply. This led to Officer C arming himself with his pistol and for Officers E and F to retain their firearms.
142. Police policy on command and control of incidents provides that the shift commander of the communications centre (in this case SouthComms), retains responsibility for the initial incident control, until control is formally passed to a suitable officer in the field. This officer is designated the 'incident controller' and assumes control once they have been fully briefed about the incident and have formed a response plan.
143. Officer D, as sergeant, was designated incident controller over the radio as he travelled to Kaiapoi. In the meantime, Officers A, B and C had to think on their feet and make their own tactical decisions. On arrival, Officer D told us his plan was to continue the approach other officers had already implemented, which was to:
- Keep members of the public safe and away from Mr Z and encourage him away from the busier parts of Kaiapoi. This was successful.
 - De-escalate the situation by calmly talking to Mr Z, with an aim that he would surrender. Mr Z engaged briefly with Officer D, but Mr Z reverted to aggressive behaviour.
 - Where opportunity presented itself, try and hold Mr Z in one place with his Police car and have officers disarm him with Tasers. This was not successful.
 - Have officers follow Mr Z from a safe distance, while providing radio updates as they waited for the arrival of the Police dog. He thought Mr Z may surrender when confronted by the dog. This was partially successful.
 - Try to find out who Mr Z was, in case Police held information on him that may be useful, or an address where he could be followed to and safely arrested. This was not successful.
 - If necessary, track him to his home (Mr Z commented that he wanted to go home) where he could be better contained and controlled, and then be taken into custody in a safe manner. This did not occur.
144. Officer D said he was also mindful that:
- Officers did not know the identity of Mr Z, and he still presented a serious risk to the public, so they could not let him escape or leave him to walk home unescorted.
 - While they followed Mr Z, members of the public could inadvertently become involved if they walked into or crossed their path. There were insufficient Police resources to block the roads or create a wider cordon.
 - Any property that Mr Z entered, including his own home, could contain other people who would be at risk.
145. Several officers at the scene heard Officer E, while en route, advise over the radio that he would not be releasing his dog onto an offender armed with a knife. Officer D did not hear this, but

nonetheless sought the dog unit's prompt arrival as a deterrent and additional manpower to contain Mr Z. Officer D also confirmed to SouthComms that the Armed Offenders Squad (AOS) and Police Negotiation Team (PNT) should be called out, as he was aware that the lead time for their arrival could be at least an hour. Their presence would be necessary if Mr Z barricaded himself into a building.

146. Officer E also considered alternative tactical options while driving towards Kaiapoi. He thought a sponge round weapon could potentially be used as a less than lethal tactical option.⁹ Only trained AOS or Special Tactics Group officers can operate the sponge round weapon, and Officer E did not have one in his dog van. He asked over the radio if a trained officer with access to the sponge round weapon was available, but none were.
147. Overall, we consider Police demonstrated good command and control during what was a fast-paced and volatile incident. The responding officers provided clear updates over radio which enabled Officer D and Officers E and F to make plans while en route to the extent possible.
148. Officer E was initially directed to the wrong street, which then had him arrive at the Peraki Street house just as Officers C and D were chased onto the front lawn by Mr Z. This delay, while unintentional, meant that Officers E and F had to confront Mr Z straight away without having an opportunity to talk to the officers and make a plan. However, given the circumstances, the officers assessed the situation and responded professionally.
149. We consider that Officers A, B, C and D made good, sensible decisions when confronted with an unusual and very dangerous situation. Officer C, as acting sergeant, arrived quickly to support his colleagues and took the lead in corralling Mr Z away from the public. Officer D demonstrated the benefit of experience in attempting to engage with and calm Mr Z, while considering the 'what ifs' of the situation as it was developing. Both Officers C and D acted bravely in following Mr Z into the unlit backyard, as Mr Z posed a serious threat to them and if he escaped.
150. Overall, the leadership of the officers set the tone for the tactical response, which remained well controlled and proportionate throughout. Police tried multiple times to disarm Mr Z through communication and other less than lethal tactics. Unfortunately, this did not prove possible.

⁹ A XM1006 high density sponge round is fired from a 40-millimetre gas launcher with a range of about 30 metres. The weapon is designed to be non-lethal and specialist Police squads (Armed Offender Squads and Special Tactics Group) have had access to this from 2015.

FINDING ON ISSUE 5

Police demonstrated good command and control throughout the incident.

A handwritten signature in blue ink, appearing to read 'Kenneth Johnston', is centered on a white rectangular background.

Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

17 October 2023

IPCA: 22-14137

Appendix – Laws and Policies

CRIMES ACT 1961

Section 39 – Force used in executing process or in arrest

“Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him or her of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made 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 section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.”

Section 40 – Preventing escape or rescue

“(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.

(2) Where any prisoner of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him or her, is justified in using such force as may be necessary to prevent the escape of or to recapture the prisoner, unless in any such case the escape can be prevented or the recapture effected by reasonable means in a less violent manner.”

Section 48 - Self-defence and defence of another

“Every one 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.”

Use of force

151. The Police's 'Use of Force' policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain 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 (pepper spray), batons, Police dogs, Tasers and firearms.
152. Police policy provides a Tactical Options Framework (TOF) 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 assessment as the TENR (Threat, Exposure, Necessity and Response).
153. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
154. 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.
155. The policy states 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.

Oleoresin Capsicum (Pepper) spray

156. Pepper spray is used by Police to subdue people. It causes a stinging sensation and generally makes people compliant so as to avoid further aggressive behaviour.
157. Police policy states that pepper spray may only be used on someone who is actively resisting, and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, "*more than verbal defiance*".

Use of Tasers

158. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive and cannot be used on a person who uses passive resistance in relation to Police.
159. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the use of a Taser, unless it is impractical or unsafe to do so.

Use of firearms

160. Police policy instructs officers to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act, and sets out the circumstances in which the use of lethal force is justified. It provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm, and if they cannot reasonably protect themselves or in a less violent manner. An offender is not to be shot until all the following conditions have been satisfied:

- they have first been asked to surrender (unless it is impractical and unsafe to ask them);
- it is clear they cannot be disarmed or arrested without first being shot; and
- further delay in apprehending the offender would be dangerous or impractical.

About the Authority



Mana Whanonga Pirihihima Motuhake

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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 Kenneth Johnston KC.

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?

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

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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