



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

# Non-fatal shooting in Palmerston North justified

1. On 26 July 2021, at a house in Palmerston North, a Police officer used a Glock pistol<sup>1</sup> to shoot at a man (Mr Z) who was escaping from Police. The shot missed Mr Z. Another officer fired two sponge rounds<sup>2</sup> at Mr Z, hitting him once. A Police dog was also used but did not catch him.
2. During this operation, Police also detained three people from the house and a woman from a car parked at the house.
3. Police notified us of the incident, and we investigated. Police investigated the use of force and found nothing of concern.

## The Authority's Findings

### **Issue 1: Was command and control adequate?**

The cordon and contain strategy was appropriate.

### **Issue 2: Was Officer A justified in deciding to shoot at Mr Z?**

Officer A was justified under section 48 of the Crimes Act 1961 in shooting at Mr Z in defence of herself and others.

Officer A's misinterpretation of instructions and consequential decision making created a situation where she had to use force.

### **Issue 3: Was Officer B justified in using sponge rounds to shoot at Mr Z?**

Officer B was justified in firing two sponge rounds at Mr Z.

<sup>1</sup> A 9 mm pistol.

<sup>2</sup> From an eXact iM pact XM1006 40mm sponge round gun.

**Issue 4: Did Police comply with the Search and Surveillance Act 2012 when searching and detaining people from the house and car?**

Police had warrantless powers to search the three people from the house and Ms Y.

Police had the power to detain all four people.

**Issue 5: Was policy followed appropriately after the shooting incident?**

In determining not to send Officer A's pistol to the armoury, the officer in charge of the investigation acted within his discretion under the policy governing investigation of critical incidents.

Police did not follow policy in respect of drug and alcohol testing of officers following a critical incident. Officer A should have been tested for both drugs and alcohol and was not.

## Background

4. On 6 April 2021, a parole recall warrant<sup>3</sup> was issued for Mr Z because of his continued access to methamphetamine (meth)<sup>4</sup>.
5. In May 2021, Police became concerned about Mr Z's access to firearms. A risk assessment plan was developed for staff, and in June 2021 an alert for "*carries weapons*" had been entered into the Police database.
6. Between May and July 2021, Mr Z had been avoiding arrest and had been involved in the following incidents with Police in Taranaki:
  - four fleeing driver incidents where he failed to stop for Police, including ramming Police cars, reckless driving and his car catching on fire; and
  - burglary and theft of cars using a firearm.
7. Police also suspected Mr Z was the driver in a further four unresolved fleeing driver incidents.
8. In the week 19 to 25 July 2021, Police Armed Offenders' Squad (AOS)<sup>5</sup> and Special Tactics Group (STG) had conducted an unsuccessful week-long operation in Taranaki to arrest Mr Z. Officers from Palmerston North had been in Taranaki assisting with the operation.
9. On 26 July 2021, Police saw Mr Z in a car in Palmerston North and AOS planned to arrest Mr Z with Police Public Safety Team (PST)<sup>6</sup> assisting with setting up cordons.<sup>7</sup>

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<sup>3</sup> If an offender released on parole breaches their conditions, or poses an undue risk to the safety of the community, a probation officer or Police officer can apply to the Board to have them recalled to continue serving their sentence in prison. A paroled offender can be recalled to prison at any time before their sentence ends.

<sup>4</sup> A Class A drug.

<sup>5</sup> AOS members deal with people who are, or are believed to be, armed and a danger to themselves, the public or Police.

<sup>6</sup> General duties officers are organised into teams to provide policing services within a district.

<sup>7</sup> Police staff contain an area to prevent a suspect from escaping or contain an armed offender and protect the public.

## ISSUE 1: WAS COMMAND AND CONTROL ADEQUATE?

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10. Just before 3pm, the car Mr Z was in drove to a house in Milson, Palmerston North. Three men got out of the car and went into a garage at the side of the house. A woman, Ms Y, stayed in the car.

### Was the cordon, contain and appeal strategy appropriate and well executed?

11. From about 3.05pm, AOS and Police started arriving at the house. Nine AOS officers arrived and surrounded the house and garage. Police cars were positioned in front of the garage and around the car to prevent Mr Z escaping by car. PST officers set up cordons, blocking the streets nearby. AOS removed Ms Y from the car and used a loud hailer to appeal to any occupants of the house to come out.
12. At 3.15pm, three people left the house and were removed from the location. AOS officers could hear noises coming from the garage and believed Mr Z was in there. They called out to him, informing him that he was under arrest and asking him to come out with his hands up. He did not respond.
13. After about 15 minutes of appealing to Mr Z, Police became concerned about the noises in the garage and broke a window to try and see inside. Mr Z then walked out of a side door of the garage, looked at AOS officers, then *"casually walked back in"* without speaking, shutting the door. Officer B, a detective, says Mr Z had his hands *"[s]ort of by his side."*
14. Soon after, Mr Z walked out of the door again. Mr Z told us he came out with his hands up. AOS Officer F, a constable, was at the front of the house and said, *"I called on [Mr Z] to put his hands in the air, which he did and I could see he had nothing in his hands."* Officer F instructed Mr Z to walk to the front of the property, where officers waiting at the front of the garage would arrest him. Mr Z briefly looked around the back of the garage, looking at the AOS officers, before moving towards the front of the property.
15. AOS officers did not communicate over the radio that Mr Z had nothing in his hands.
16. Mr Z walked to the front of the garage and across the front of the house. The following events occurred very quickly, in just under a minute:
  - 1) Mr Z *"dashed"* across the yard and *"leapt"* over a low fence (about waist height).
  - 2) He ran *"[a]t pace and unimpeded"* with Officer B and his AOS partner chasing.
  - 3) The AOS dog handler released the Police dog to catch Mr Z. The dog jumped over the low fence after Mr Z.
  - 4) Mr Z sprinted down a drive, *"put his hands on top"* of a second, higher fence (about six foot high) and *"vaulted"* over. AOS officers from the front and back of the house ran after Mr Z. The Police dog bit the leg of an AOS officer following Mr Z over the fence.

- 5) Mr Z continued ignoring Police instructions to stop and ran through two neighbouring properties, leaping over fences to escape.
  - 6) He was running towards Leeds Street but changed direction when he saw the Police cordon and instead ran through the back of properties on Leeds Street, with AOS officers following.
  - 7) Officer B fired a sponge round at Mr Z. The round missed, and Mr Z jumped over another fence.
  - 8) Mr Z ran across the back porch of a house on Leeds Street moving towards a driveway between two properties. At the same time, Officer A, a PST constable who was tasked with holding a cordon, ran down the driveway to cut Mr Z off. She challenged him, saying “*stop, armed Police*”. He turned, ran and climbed over another fence into a neighbour’s yard. Officer A followed him and challenged him twice more. He then stopped and turned to face her, but she could not see his hands.
  - 9) Officer A fired a single shot from her pistol at Mr Z, missing him. At about the same time Officer B fired a second sponge round, hitting Mr Z in the back.
  - 10) After being hit by the sponge round, Mr Z staggered slightly but continued running through properties, heading towards Fairs Road with AOS chasing him.
  - 11) At about 3.31pm, Mr Z was arrested at a nearby property on Fairs Road. Police also arrested three other males who were in the garage.
17. Officer E was in charge of the operation and told us “*[t]he plan was always to cordon, contain and appeal for [Mr Z] to give himself up.*”
  18. Communication between AOS and PST is usually through the commanders of each group, with the AOS commander sitting in the command car with the officer in charge. The AOS Forward Commander, a sergeant, was not in the command car and says “*[w]e were short of staff so I deployed onto the ground.*” He was near the front of the house and saw Mr Z walk out of the garage on both occasions, run towards Leeds Street, and then his movement back towards Fairs Road. He stayed at the house when Mr Z disappeared from his sight as the house and garage were yet to be checked.
  19. The AOS Forward Commander and Officer C commented that more AOS members to cover the garage and long driveway may have been useful. Officer A also told us it may have been helpful to have had more staff and cordons in place. Officer E’s view was Police had ample and appropriate staffing to deploy if required.
  20. In our view, the cordon and contain strategy was appropriate. Execution of the cordon around the house and garage would have been easier for Police if more AOS members had been available, but we believe staff did the best they could with the resourcing available.

### How was communication with PST managed?

21. We have investigated command and control because it relates to Officer A's understanding of the circumstances at the time she shot at Mr Z.
22. In Palmerston North, Police use a standard unencrypted open radio channel for their communication. For security, AOS use an encrypted radio channel. PST could not listen to the AOS radio and relied on the officer in charge, Officer E, to pass on information on the unencrypted radio. Officer E was in the command car and had access to both the encrypted AOS radio and the unencrypted Police radio. He passed on to PST on the unencrypted radio what was happening from the encrypted AOS radio.

### What was communicated to AOS?

23. The AOS radio communication was not recorded. The AOS Forward Commander told us when he saw Mr Z walk out of the garage he *"passed this on"* to AOS staff over the encrypted radio. While Mr Z was standing at the house a lot of the communication was verbal between AOS staff. However, once Mr Z started to run, the radio communication increased. The AOS Forward Commander recalls communication on the encrypted radio included:
  - Mr Z was identified and a description of him and his clothes given;
  - Mr Z had fled from the house and the direction he was going;
  - Mr Z was going over fences and through properties; and
  - Mr Z was now heading towards Fairs Road.

### What was communicated to PST?

24. Initial radio communication was about setting up cordons on nearby roads and confirming Mr Z was at the house. There was no communication on the unencrypted Police radio for the five minutes before Mr Z started to run. The following was communicated over the next minute:
  - *"targets running"*;
  - *"Target's running towards you [Officer K]"*;
  - *"I think I've got eyes on him further down the street, guys driving around might be looking for him, further down Cambridge/Leeds"*;
  - *"Heading towards Fairs comms"*;
  - *"Baseball cap, green singlet"*; and
  - *"he's in custody"*.

25. The unencrypted Police radio had:
- no update on AOS tactics and uses of force, for example use of the Police dog and sponge round gun;
  - no update on AOS officer observations of Mr Z; and
  - limited updates on Mr Z's movements (beyond *"running"*, *"running towards you [Officer K]"* and *"heading towards Fairs"*).
26. The AOS Forward Commander says he also verbally communicated with PST staff (Officer A and her partner) on the cordon of Leeds Street and Carlisle Street by yelling at them to move down Leeds Street to cut off Mr Z.
27. Officers B, C, and the AOS Forward Commander told us they could see Mr Z had nothing in his hands (no weapon seen). This was not communicated on either radio, because as Officer C noted *"we only see what we see"* and an offender may have a hidden weapon.

#### *Was communication with PST adequate?*

28. The AOS Forward Commander says PST and AOS have *"vastly different"* roles, and AOS usually only communicate with PST before and after the incident. Officer C told us communication between AOS and PST can be limited; the situation *"unfolded very fast"* so there was little time for updates, and staff running will not *"get on a radio and try and talk at the same time"*. Officer E told us *"at a normal AOS incident not a heck of a lot goes over the radio ... sporadic updates on pertinent information"*.
29. The AOS Forward Commander and Officer I say it would make communication with PST easier if PST could access the encrypted AOS radio, however they are concerned this could introduce unnecessary noise in a potentially life-threatening situation. The AOS Forward Commander told us *"there's definitely a reason why the Comms are secure and secluded, but I guess the pitfalls of that are highlighted in an instance like this"*.
30. Officer A could listen to the unencrypted Police radio and hear officers yelling. She told us *"[i]t would have been good to have more communication with AOS, where they were moving."* In her Tactical Options Report<sup>8</sup> she described communication difficulties she had with AOS:
- "I noticed the single AOS member on the other side of the fence; however I was not able to communicate with them as AOS have a closed radio system and are not part of the main Palmerston North channel. ... I was unable to know what [AOS] had encountered at the address or what tactics had been used on [Mr Z]."*
31. As stated in paragraph 25, we consider important information was not communicated to PST staff, partly because of a reluctance by AOS to use an unencrypted channel. Had this information been communicated to PST staff, Officer A could have used this to inform her decision making.

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<sup>8</sup> This report includes each tactical option and a description of the force used and the reasons for using it.

32. We would not expect PST to be on the AOS channel. However, because general Police radio in Palmerston North was not on an encrypted channel, Officer E did not have a secure means by which to pass on information to PST.

## FINDING ON ISSUE 1

The cordon and contain strategy was appropriate.

## ISSUE 2: WAS OFFICER A JUSTIFIED IN DECIDING TO SHOOT AT MR Z?

### What information was Officer A given at the briefing meeting?

33. At the start of shift at 2pm, Officer C (Officer A's usual sergeant), Officer D (acting sergeant), and Officer E (a detective sergeant) briefed the PST at Palmerston North Police Station. Officer A and other PST officers were shown a Police intelligence report which had a photograph of Mr Z and were told:
- Mr Z *"is almost certainly in possession of a firearm and is motivated to use it"* (this information was highlighted in red on the intelligence report);
  - "Do not engage in [a car] Pursuit"* as Mr Z will not stop for Police;
  - Mr Z had a parole recall warrant and a warrant out for his arrest;
  - Mr Z was known to carry and use firearms and knives;
  - Mr Z is a high-risk offender; and
  - Mr Z had been shot in the leg six days before and *"is likely being assisted"*.
34. Officer D directed fire orders<sup>9</sup> be read out for officers to consider. PST officers armed themselves with pistols because they believed Mr Z was armed and presented a serious risk of harm to members of the public or Police. AOS officers were contacted.

### How did Officer A end up in a position where she was confronting Mr Z?

35. On arrival at the house, AOS members set up an inner cordon directly around the area they were operating within. Only AOS members were to operate within this cordon.
36. PST were tasked with holding outer cordons. -These were set up further out from the area AOS were operating in, with the specific task of controlling access to the area.
37. Officer E directed PST to find appropriate outer cordon points along the streets surrounding the house. Officer A and Officer H, a constable, were on a cordon on the corner of Carlisle Street and Leeds Street when Mr Z ran from the house and jumped over fences into neighbouring

<sup>9</sup> Fire orders are instructions which set out the circumstances under which Police may use firearms.

properties. The AOS Forward Commander told us the AOS inner cordon then *“started shifting reasonably dramatically”* in an attempt to continue to surround Mr Z.

38. AOS Officer I, a sergeant, yelled and motioned for Officers A and H to move down Leeds Street. Officer I says his intention was to get officers in front of Mr Z, to cordon him off, hoping Mr Z would stop and hide. The AOS Forward Commander told us he expected officers to move down Leeds Street to hold the cordon, observe Mr Z, and possibly intercept if it was safe. He did not expect *“an injection into ... an AOS cordon, to intercept.”*
39. Officer A told us she cannot remember exactly what was said. Her understanding was she was to run down Leeds Street and *“cut him off”*, to *“get down and ... hold another cordon”*. She ran down the street with Officer H behind her.
40. Officer H says *“AOS had caught up to where we were and they were armed”* so she put her pistol away and got out her Taser. When Mr Z started moving towards her position on Leeds Street, she yelled at him to get on the ground and turned on her Taser *“for a second”*. Mr Z then moved back towards the rear of the property and Officer H could not see him from her position on the street.
41. Officer A had earlier looked at the area on Google Maps and instead of holding the outer cordon with Officer H, Officer A decided to run from the street and down a driveway to cut Mr Z off because *“he was right there ... [and] there was no-one else there apart from me”*. She was holding a pistol.

#### **What happened when Officer A challenged Mr Z?**

42. At the end of the driveway Officer A *“came across [Mr Z] standing on the porch”* about 1.5 to 2 metres from her. She said he ran onto the porch as if he was going to move onto the driveway where she was. She yelled *“stop, armed Police”* and pointed her pistol at him, *“but he didn’t respond”*.
43. Mr Z told us he remembers *“eyeballing”* Police. He recalls pausing and thinking about going under the house or in the roof. He turned around and moved back along the porch and started climbing over a fence into a neighbour’s yard. Officer A *“moved up”* to follow him.
44. Mr Z was now about 3 metres away and Officer A again yelled at him to stop. She said he paused on the fence when she yelled and then jumped down and paused in the yard. She said:

*“I could not see his hands. He was facing me when he paused, I could not tell what he was thinking due to the wide eyes and blank look on his face.”*
45. She saw an AOS member (Officer B) in the property to the side of the yard, about 6 metres away. Officer A moved to a gate in the fence and challenged Mr Z a third time as he stood and faced her from the yard about 5 to 6 metres away.
46. Officer A said she aimed with her arms over a chest high fence and fired a single shot from her pistol at Mr Z. The shot missed and Mr Z continued to run away.



47. The shell from the bullet was later found in the yard, to the right of the fence Officer A was leaning over, near another fence beside a path. The bullet was never found. Pistol shells eject to the right-hand side, so the location of the shell is consistent with Officer A's recollection of the incident.

#### Did Officer A shoot at Mr Z before or after Officer B fired the second sponge round?

48. The order of shots by Officers A and B is unclear. If Officer A had fired her shot after Officer B fired the second sponge round, Mr Z would have been well past the halfway point of the yard and no longer a threat to Officer A, because the sponge round hit Mr Z on his back. However, because we have not been able to determine the order of the shots, we cannot make a finding on this. Events happened quickly, and most people recalled the sounds being very close together and were unable to say which sound came first:
- Officer A did not remember hearing the sponge round, and if she heard a bang did not know if it was another firearm or sponge round;
  - Mr Z thought perhaps a couple of rounds were fired at him but *"they just cracked over [his] head"*;
  - Officer I was behind Officer A and says the shots were in *"close succession"*, but he did not know which one was first;
  - Officer H was standing on Leeds Street and told us she heard *"a couple of bangs ... slightly separated"*, but she could not tell the difference between the sounds; and
  - The AOS Forward Commander told us he thinks the pistol and second sponge round were *"nearly simultaneous"*.
49. Officer B fired the sponge round and recalls the pistol shot was *"very close to my second shot, maybe a second or two before"*. Officer G believed the first and second shot *"sounded hollower than the third"*, and *"the third bang sounded sharper and crisper"*. However, he was not close to the incident (see paragraph 105) and had not heard a sponge round being fired before.
50. Two witnesses had differing accounts that cannot be reconciled with the recollections above:
- 1) Ms X, a neighbour, was watching from her house. She recalled hearing a loud 'pop' sound, then seeing Mr Z running and jumping over a fence and hearing and seeing the second sponge round being fired a few seconds later. She recalls seeing Mr Z running and jumping more fences before being challenged by Officer A. She then saw Officer A fire her pistol. She said, *"there would have only been a couple of minutes maximum between the first shots by the AOS officers and the third shot by the female officer."*
  - 2) Neighbours from another house recalled hearing two bangs that sounded like gunshots and then, about 15 seconds later, a third 'pop' sound.

51. We note Police also used a distraction device<sup>10</sup> when clearing the house, between 3.35pm and 4pm. This makes two bangs, five seconds apart. It is possible that some witnesses may have reported hearing this device rather than weapons being fired.
52. This does not entirely explain the discrepancy with Ms X's account, as she saw Officer B fire the sponge round and Officer A fire her pistol. However, her description of the delay between the last sponge round and the pistol shot is not corroborated by other witness accounts and is not supported by the physical evidence, as the second sponge round and the pistol shell were found in the same yard.
53. We consider the pistol shot and the second sponge round were fired within a short time of each other but are unable to determine the order in which they were used.

#### **What are the possible justifications for Officer A's use of force in these circumstances?**

54. The following provisions of the Crimes Act 1961 provide legal justification for using force in certain circumstances:
  - a) 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.
  - b) 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.
  - c) Section 48 provides that any person is justified in using "*reasonable*" force in defence of themselves or another.
55. In this case section 39 does not apply as Mr Z was not using force to resist arrest when Officer A shot at him. Section 40 is relevant as he was trying to escape to avoid arrest. Section 48 applies as Officer A says she fired her pistol in defence of herself and others.
56. We will consider section 40 and then section 48.

#### **Was Officer A legally justified using force against Mr Z to prevent his escape under section 40?**

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. "Necessary" force in this context is force that is proportionate to:
  - the seriousness of the offence for which the person is to be apprehended and the public interest in detaining them to bring them to justice; and
  - the effect of an escape on the likelihood of the person being brought to justice (such as loss of evidence or difficulties in identifying the person and/or apprehending them later); and

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<sup>10</sup> SF2 distraction device.

- the likelihood and severity of the risk they pose of further offending if escape is not prevented.

58. Under section 40, we 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 Officer A believe on reasonable grounds that Mr Z was fleeing to avoid or escape arrest?*

59. Officer A believed Mr Z was fleeing to avoid arrest:

- she knew from the briefing he had evaded Police for three months before this incident;
- she saw him running from Police and change direction to avoid Police cordons; and
- he did not stop when she ordered him to stop and told him that she was an armed Police officer.

60. In our judgment, Officer A had reasonable grounds to believe Mr Z was fleeing to avoid arrest.

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

61. Officer A says she shot at Mr Z to prevent him escaping because he posed a threat in that he might kill or injure other people, and his escape could not reasonably be prevented in a less violent manner.

62. Officer A knew there was a parole recall warrant and a warrant out for Mr Z's arrest. He had been on the run from Police for three months, was involved in fleeing driver incidents and was wanted for questioning.<sup>11</sup> She was told he was a high-risk offender and was *"almost certainly in possession of a firearm and is motivated to use it"*. The seriousness of his offences and his persistence in evading Police justified Police using force to prevent him escaping.

63. Section 40 requires Police to use the minimum force needed to achieve their objective. Force will not be justified if the escape could have been *"prevented by reasonable means in a less violent manner"*.

64. Officer A says when she came across Mr Z on the porch, she was holding her pistol and it would have taken too long to change to a Taser or pepper spray, giving him time to get closer to her and increase the risk of him injuring or killing her. She also considered Mr Z was too far away for her effectively to Taser or spray him, and spray may not have worked immediately because of

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<sup>11</sup> Officer A does not mention if she was aware Mr Z was suspected of burglary and theft of cars using a firearm (aggravated robbery is a serious offence).

his heightened state (meth use). She did not consider using her baton or manually handling Mr Z because of the threat she thought he posed.

65. We accept there were no reasonable “*less violent*” tactical options than firearms immediately available to Officer A. However, that does not necessarily mean Officer A was justified in shooting at Mr Z. The use of firearms must still be proportionate when weighed against the necessity to bring Mr Z to justice, the likelihood of his apprehension at a later time, and the risk he would have posed to others if he had escaped.
66. We accept that Mr Z was determined to evade Police and had proved difficult to catch. We also agree there was a high risk he would continue offending if not caught.
67. However, at the time when Officer A shot at Mr Z, he did not pose any immediate threat. Nor was there reason for her to believe that if she did not catch him then, he would pose a threat to others nearby. At no point did she see him with a weapon, and he had not fired any shots.<sup>12</sup> Additionally, there were nine AOS members in the area and although Mr Z was running, he was still surrounded by them and other officers. It was therefore still likely AOS would catch him that day.
68. In our view, the use of potentially lethal force by Officer A to prevent Mr Z’s escape in these circumstances was not a reasonable response and was therefore not justified under section 40.
69. That leaves section 48.

#### **Was Officer A legally justified in using force against Mr Z to defend herself or another?**

70. 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.
71. Under section 48, we must assess Officer A’s actions on both:
  - a subjective basis (that is, what Officer A genuinely believed); and
  - an objective basis (what a “*reasonable*” person would have done).
72. This assessment involves three questions:
  - a) What were the circumstances as the officer believed them to be? (a subjective test)
  - b) Was the officer’s use of force against Mr Z for the purpose of defending 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)

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<sup>12</sup> It was later established he did not have a weapon in his possession.

*What was Officer A's understanding of the circumstances?*

73. Officer A believed Mr Z posed a threat of killing or injuring her. She also perceived Mr Z posed a risk to other officers and possibly members of the public, although this was not an immediate threat as she was not aware of any members of the public in the vicinity.
74. The following summary of the circumstances as Officer A understood them to be at that time are taken from her Tactical Options Report, the Police interview and what she told us. Officer A said:
- a) She relied on information she was given at the briefing and believed Mr Z was a high-risk offender who *"almost certainly"* had a firearm and would shoot at Police to avoid arrest.
  - b) She was not able to see his hands or if he was hiding anything because he was holding his hands *"round his hip area but towards the back"*.
  - c) She made the decision to shoot because *"it looked like he was about to move towards me"*. She recalls either a slight movement towards her or that it looked like he was about to move towards her when he paused in the yard. Mr Z had previously moved towards her on the porch, and could jump fences and run easily and quickly, so would have been able to get to her.
  - d) She did not of course know his intentions, but she says Mr Z looked like he may have been using drugs.<sup>13</sup> She says he had a blank look and wide eyes and was able to run quickly even with an injured leg.
  - e) Her focus was on Mr Z and she was not aware of AOS or other officers near her, except Officer B, who was about 6 metres away on the other side of the yard at a neighbouring property. She may have seen a long barrel-like rifle aimed over the fence (the sponge round gun).
  - f) She was not able to communicate by radio with Officer B and was not aware of the tactical options AOS were using.
  - g) Mr Z was bigger in stature than her.
  - h) Mr Z was avoiding multiple AOS members.
  - i) The only person in the way of her shot was Mr Z.
75. Officer A says she shot at Mr Z because she could not see his hands and feared he had a weapon and would shoot her:

*"I still couldn't see his hands or anything like that as he was looking at me and he started to move slightly towards me and that's when I made my decision to fire my [pistol], aiming at him".*

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<sup>13</sup> Mr Z had been taking meth.

76. Mr Z told us he did not yell or *“offer any violence”* or threats; he was just running. He did not speak, was not following Police instructions, and was running to escape arrest. Officer A found his movement towards her threatening because of her belief that he was likely to be carrying a weapon and was *“motivated to use it”*.
77. Officer A told us her recollection was she aimed and fired at Mr Z’s front while he paused, facing her. Ms X told us she saw Officer A lean over the fence and shoot at Mr Z as he was running away. As discussed earlier, we cannot reconcile Ms X’s recollection of events with the other evidence (see paragraph 52), so have not relied on it.
78. Officer A was not aware other officers had seen Mr Z had nothing in his hands. From her cordon position on Leeds Street, Officer A says she saw Mr Z running from the first house and jumping fences. After he jumped off the porch, she also saw him climb over a fence. She told us she could not recall how he pushed himself up over fences, but both hands on top of the fence is how she imagined she would push herself up over a fence. Mr Z says he had both hands on the top of the fence when jumping over them.
79. Officer A had seen Mr Z close up on the porch and acknowledges she did not see any weapon.<sup>14</sup> Any threat in that case would have to be from a hidden weapon. Mr Z says *“They could see everything... I’m only 57 kilos, and I’m in a singlet and shorts.”* Officer A remembered him wearing *“a baggy singlet”* but not what he was wearing on the bottom half of his body because she *“didn’t actually see the bottom very much”*. When Officer A saw Mr Z pause when facing her, slightly move or look to slightly move towards her, and she could not see his hands, she had to make a split-second decision. She believed he had a weapon because of the intelligence briefing she had received and her perception of this risk did not change.
80. Officer A was a new constable, with one year's experience, and this was her first operation with AOS. She says her role that day was *“just traffic control and outer cordons”* and she assumed AOS would be chasing and catching Mr Z. When she ran inside an AOS cordon she unexpectedly came face to face with Mr Z. As a new constable she had limited experience and training<sup>15</sup> to rely on and this is likely to have limited her situational awareness. We also acknowledge that important information was not communicated to PST staff because they could not listen to or communicate on the encrypted radio channel. This meant that Officer A was unaware that the AOS area of operation had shifted and that officers were chasing Mr Z in the area she moved into. This reduced her ability to reassess the risk she perceived Mr Z posed.
81. Events unfolded quickly, and although we consider Officer A made an error in judgment as to the likely threat Mr Z posed, we accept Officer A genuinely believed the threat was real and imminent.

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<sup>14</sup> Mr Z was not carrying a weapon (although Police later searched the car he arrived in and found a rifle, meth and cash).

<sup>15</sup> She told us she had two weeks of firearms training at the Royal New Zealand Police College, and a district firearms training day about a month before the incident.

*Was Officer A's use of force for the purpose of defending herself or another?*

82. We accept Officer A's recollection of events that she used force to defend herself. She feared Mr Z had a weapon and would shoot her.

*Was Officer A's use of force against Mr Z reasonable in the circumstances as she believed them to be?*

83. Officer A perceived there was a high probability she would be seriously injured or killed, and we accept she perceived the risk of being shot was imminent.
84. We have been unable to determine whether Officer A shot at Mr Z shortly before or shortly after Officer B fired the second sponge round. However, it is likely the shots were close together in time (see paragraphs 48 to 53). Officer A had seen Officer B but was not aware he was using other tactical options. We accept that other less forceful options were not available to Officer A (see paragraphs 64 to 65).
85. There was an obvious risk of harm from Officer A firing her pistol in a residential area, to the general public and AOS members who were chasing Mr Z. Officer A says she was focused on Mr Z, and the only other person she could see was an AOS member (Officer B).
86. It is now known that the risk posed by Mr Z was materially lower than Officer A perceived it to be, as he did not have a weapon and ran away. Clearly, Officer A had an inaccurate perception of the risk. However, her use of force was proportionate to the level of threat she genuinely believed he posed. On that basis, we conclude that her use of force was justified to defend herself.
87. We have some additional comment on the quality of Officer A's decision making and actions that led to her confronting Mr Z.

**Were Officer A's actions reasonable overall?**

88. Although we find Officer A's use of force was justified in the circumstances as she believed them to be at the time when she fired her pistol, we consider her misinterpretation of instructions and consequential decision making put her in the position where she had to use force.
89. As outlined in paragraphs 40 and 41, when Officer A and Officer H ran down the road to set another cordon, Officer H stayed and held a cordon on the road armed with her Taser, whereas Officer A decided to run down the driveway with her pistol. Officer A was aware that PST's role was to stay outside the area of AOS operation and hold the outer cordons. Although Officer A says that she was directed by the AOS Forward Commander to run down Leeds Street and cut off Mr Z, she appears to have misinterpreted the instruction. As noted in paragraph 38, the AOS Forward Commander says he did not expect Officer A to move from the cordon towards the area of AOS operation in order to intercept Mr Z. In our assessment, as a PST officer, it was unreasonable of Officer A to move from the cordon on the road and insert herself so close to Mr Z when there were AOS staff close by who had the appropriate training and experience to deal with the situation.

90. We also consider Officer A's perception of risk relied heavily on the briefing she received. She did not adequately reassess the risk in the field when she saw Mr Z running and jumping over fences, although we acknowledge she was a relatively new officer and the lack of communication from others made this more difficult for her.

## FINDINGS ON ISSUE 2

Officer A was justified under section 48 of the Crimes Act 1961 in shooting at Mr Z in defence of herself and others.

Officer A's misinterpretation of instructions and consequential decision making created a situation where she had to use force.

## ISSUE 3: WAS OFFICER B JUSTIFIED IN USING SPONGE ROUNDS TO SHOOT AT MR Z?

### What happened?

91. When Mr Z ran through the back of properties on Leeds Street, Officer B saw him run directly in front of him, from left to right. Officer B put his Bushmaster M4 rifle<sup>16</sup> on the ground and aimed his non-lethal sponge round gun<sup>17</sup> at Mr Z. He fired the sponge round and missed Mr Z, hitting the fence. He then reloaded as he ran after Mr Z.
92. Officer B saw Mr Z jump over a fence, “[h]e's sort of put two hands on it and vaulted over the fence”. Officer B propped his sponge round gun on the top of a fence and located Mr Z in his sights. As he did this he saw Officer A, and another officer, and noticed Officer A had a pistol. He said the pistol was either in her holster or in her hand, but was not aimed at Mr Z.
93. Officer B refocused on the sights and fired a second sponge round, hitting Mr Z on the back. At this time Officer B heard a loud bang. He could not place exactly when it happened, because he was focused on his own actions, but thought the pistol shot was “*maybe a second or two before*” his shot (see paragraph 49).
94. Following the bang and his second round, Officer B loaded a third round, but decided not to fire as Mr Z was climbing over another fence and he was unsure if PST staff were on the other side.
95. Mr Z says he was hit “*one on the back and one on the calf muscle*” by a sponge round. In our assessment, Mr Z was shot on the back with a sponge round. Photos taken at the hospital show Mr Z's bruised back and an old wound on his lower right leg from the shooting incident he was involved in the week before. We do not accept that Mr Z was shot on his calf with a sponge round because we have a photo of where the first round hit a wooden fence and left an indent.

<sup>16</sup> A .22 calibre – .223 calibre assault rifle.

<sup>17</sup> eXact Impact XM1006 40mm.



### What are the possible justifications for Officer B's use of force in these circumstances?

96. The provisions of the Crimes Act 1961 that provide legal justification for using force in certain circumstances are stated in paragraph 54. Section 39 is irrelevant as Mr Z was not resisting arrest at the time Officer B shot at him. Section 40 applies as Mr Z was trying to escape arrest. The requirements of section 40 are stated in paragraphs 57 and 58.

### Was Officer B legally justified using force against Mr Z to prevent his escape under section 40?

#### *Did Officer B believe on reasonable grounds that Mr Z was fleeing to avoid or escape arrest?*

97. Officer B's understanding was:

- Mr Z had been evading Police for three months before this incident;
- he was running from Police and changing direction to avoid Police cordons and avoid arrest; and
- he did not stop after Police told him he was under arrest and instructed him to stop.

98. In our judgment, Officer B had reasonable grounds to believe that Mr Z was fleeing to avoid arrest.

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

99. Officer B reasonably suspected Mr Z had committed serious offences. He knew there was a parole recall warrant outstanding and a warrant out for Mr Z's arrest related to his continued access to meth, that Mr Z had been on the run from Police for three months and was involved in fleeing driver incidents and wanted for questioning. He was a high-risk offender and likely to be carrying a weapon. The seriousness of Mr Z's offences and his persistence in evading Police justified Police using force to prevent him from evading arrest. Officer B reasonably believed Mr Z posed a risk.

100. When Officer B saw Mr Z was not holding a weapon, he put down his M4 rifle and chose to use the sponge round gun to prevent Mr Z escaping. This tactical choice of a less than lethal option was proportionate to the risk Mr Z posed to the public and Police staff, based on Mr Z's criminal history and intelligence briefings, including Mr Z evading Police for three months.

### FINDING ON ISSUE 3

Officer B was justified in firing two sponge rounds at Mr Z.

## ISSUE 4: DID POLICE COMPLY WITH THE SEARCH AND SURVEILLANCE ACT 2012 WHEN SEARCHING AND DETAINING PEOPLE FROM THE HOUSE AND CAR?

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### What happened?

101. At 3.09pm, AOS members removed a female passenger (Ms Y) from the car Mr Z arrived in. AOS Officer I handcuffed Ms Y and says he told her she was detained.
102. Officer J, a detective, supervised Ms Y at a receiving area around the corner from the house. Officer E tasked Officer J to “*debrief, search and gain information from [Ms Y] regarding Mr Z*”, including where Mr Z was and whether he had any weapons on him.
103. Officer J said Ms Y told her she had arrived in a car with a “*random male*” to see a friend at the address. She was vague in her answers. Officer E said he asked Ms Y where Mr Z had gone but she did not answer. Officer J said Ms Y later gestured that she was with Mr Z and he had gone into the garage.
104. At about 3.15pm, two women and a man followed Police instructions and left the house. They were taken by AOS to Officer E who directed Officer G to move them to the receiving area and detain them. The man, who was known to Police for drug offences, was handcuffed. The AOS Forward Commander advised the three people of their rights.<sup>18</sup>
105. At about 3.20pm, Officer J asked Ms Y if she had been advised of her rights and she said “*no*”, so Officer J gave her the required advice. After hearing what sounded like a shot being fired, Officer G left the three people from the house with Officer J and ran to assist with the containment of Mr Z.
106. Ms Y and the three people from the house were detained for about an hour. They were searched and released without charge. The officers who searched all four people stated they did so under the Search and Surveillance Act 2012 (the Act).
107. At about 4.57pm, Officer J and another officer searched the house.
108. At 5.00pm, the inside of the car Mr Z and Ms Y arrived in was searched and meth was found. Police say the search of the car was undertaken at the first reasonable opportunity once it had been deemed safe to do so.
109. The car had an unusual boot locking mechanism and officers also could not access the boot via the rear seats. Police therefore seized the car to continue the search in relation to the boot area only. When Police searched the boot of the car days later they found a rifle, meth and cash.

### Could officers search the three people from the house and Ms Y without a warrant?

110. Although officers were not specific about which sections of the Act they were relying on, officers undertaking a warrantless search of a place or vehicle under section 20 of the Act may also,

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<sup>18</sup> Under the New Zealand Bill of Rights Act 1990.

under section 21 of the Act, undertake a warrantless search of people found in that place or vehicle.

111. The fact that the searches of the three people from the house and Ms Y occurred before the searches of the house and car is immaterial; the searches occurred in relatively quick succession and were clearly connected.
112. The warrantless searches of all four people were therefore justified.

#### Could officers detain all four people?

113. Officer E says he undertook a search at the house under the Act, and the three people from the house and Ms Y were detained in order to enable Police to search for evidence.
114. At 3.09pm, Officer I handcuffed Ms Y and says he told her she was detained “*because we’re looking for Mr Z*”. Mr Z was arrested at 3.31pm and at about 4pm Ms Y asked why she was still detained. Officer J told her she was detained under the Act in relation to Mr Z.
115. Officer I says Ms Y was detained and handcuffed because Police were looking for Mr Z, who was understood to have access to firearms. The car had yet to be searched,<sup>19</sup> and she came from the same car as Mr Z. Officer I believed Police could detain Ms Y until the house being searched had been cleared.
116. Section 118 of the Act provides that Police can detain for a reasonable time, not longer than the duration of the search, “*for the purposes of determining whether there is any connection between a person and the object of the search*”.
117. We are satisfied that Police had the power to detain all four people until AOS had cleared the house and Police had searched it. Police did not know who the people were and, until they had searched the house, were not in a position to question the four people about their potential involvement in the suspected offending at the house.

#### FINDINGS ON ISSUE 4

Police had warrantless powers to search the three people from the house and Ms Y.

Police had the power to detain all four people.

#### ISSUE 5: WAS POLICY FOLLOWED APPROPRIATELY AFTER THE SHOOTING INCIDENT?

##### What happened?

118. After the arrest, officers took Mr Z to the Police station and called an ambulance as he “*seemed faint and heavily sweaty*”. Mr Z told us he had been taking meth and felt dizzy. At 4.15pm, Officer

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<sup>19</sup> Mr Z was not carrying a weapon (although Police later searched the car he arrived in and found a rifle, meth and cash).

D told ambulance staff about the area on Mr Z's back where the sponge round hit (it was red and raised), Mr Z's meth use, and an old wound on Mr Z's lower right leg (from the week before). Mr Z received appropriate medical care. Later Mr Z was treated at hospital.

119. At the scene, Officer A told Officer H, and then the AOS Forward Commander, that she had fired her pistol. They went to the scene and found the shell but could not find the bullet. The AOS Forward Commander then told Officer C who informed Officer E at about 3.50pm. As the officer in charge, Officer E:

- informed the Detective Senior Sergeant a pistol had been fired;
- directed Officer K, a detective sergeant, to examine the area where Officer A fired her pistol; and
- directed that no cars be moved on Carlisle Street.

120. At 4.06pm, Officer K arrived at the scene with Officer C and met the AOS Forward Commander and Officer A. As part of the scene examination:

- Officer K picked up the shell from Officer A's pistol in the yard, returned it to the Police station, and arranged for it to be secured and exhibited;
- Officer K took photographs at the scene;
- an AOS member picked up the sponge round which was in the yard;
- Officer K discussed Officer A's welfare with her and the AOS Forward Commander and asked him to return with Officer A to the Police station; and
- Officer K directed the AOS Forward Commander to *"deal with Officer A's firearm and fully document its status"*.

### Was Officer A's pistol appropriately managed?

121. At 4.22pm, the AOS Forward Commander and Officer A left the scene to return to the Police station. At 4.39pm, Officer A handed her pistol to him. He examined the pistol, counted out the rounds, entered it into the Police property management database and placed it in the exhibit store.

122. On 2 September 2021, the AOS Forward Commander was tasked by the officer in charge of the Police Critical Incident investigation (the Detective Inspector) to function test the pistol.

123. When the pistol discharge is intentional, but no one was killed or injured, 'Police firearms instructions' does not say the firearm has to be sent to the Police Armoury for testing. It says:

*"Secure the firearm and remaining rounds, making the firearm safe as soon as practicable recording any action taken. Note: On no account is the firearm to be altered or items/accessories removed."*

124. However, the Police's 'Investigation of critical incidents'<sup>20</sup> policy gives the senior investigating officer (SIO)<sup>21</sup> some discretion as to whether to send the pistol to the Police Armoury. The policy says:

*"The SIO must determine the type of forensic testing to be carried out in respect of the employee(s) or exhibits associated to the employee(s). A decision to request samples or to carry out particular testing should be informed by the likely investigative benefits, the need to conduct a robust enquiry and the perception of a thorough and impartial investigation."*

125. A firearm sent away for testing can be out of circulation for a period of time, and this can affect operational capability. However, in our view, because the bullet from Officer A's pistol was not found, the SIO should have used their discretion and directed Officer A's pistol be sent to the Police Armoury to check function and accuracy. We accept, however, that the officer in charge made a justifiable assessment and discussed the decision with his supervisor before determining not to send the pistol to the armoury. Such a decision is within his remit under the policy governing critical incidents.

126. Directing the AOS Forward Commander to examine the pistol when he also recovered and exhibited the pistol, could result in a perceived conflict of interest and does not meet the requirement to ensure the investigation is perceived as thorough and impartial and does not represent a robust enquiry into a Police shooting incident. However, we note the choice of the AOS Forward Commander as a highly qualified person already involved in the chain of custody was a pragmatic solution in the circumstances and had no adverse consequences.

### Should Officer A have been drug and alcohol tested after the incident?

127. The Police's 'Drug and alcohol' policy says a Police employee relevant to a critical incident should be tested for drugs and alcohol:

- *"As soon as is reasonably practicable after a critical incident, and following the management of immediate safety and welfare considerations, the relevant employee(s) should be tested for drugs and alcohol in accordance with the following process:"*
- *"the breath alcohol test should be conducted within 2 hours of the critical incident."*

128. Officer A was not tested for drugs and alcohol after she shot at Mr Z. She says she was taken home before the tests were able to be done. Her acting sergeant, Officer D, said Officer A was upset and conversations focused on her welfare. In her Police interview she was asked whether she had taken drugs or alcohol the night before the incident and she said no.

129. Police should have tested Officer A for drugs and alcohol to check she was not impaired at the time of the incident. This was necessary for a robust and impartial investigation and was a breach of practice, which Police acknowledge.

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<sup>20</sup> A critical incident includes any incident where a Police employee discharges a firearm intentionally at a person, whether or not death or injury results.

<sup>21</sup> An experienced senior investigator appointed to lead the Police investigation.

## FINDINGS ON ISSUE 5

In determining not to send Officer A's pistol to the armoury, the officer in charge of the investigation acted within his discretion under the policy governing investigation of critical incidents.

Police did not follow policy in respect of drug and alcohol testing of officers following a critical incident. Officer A should have been tested for both drugs and alcohol and was not.



**Judge Kenneth Johnston KC**

Chair  
Independent Police Conduct Authority

29 March 2024

**IPCA: 21- 8439**

## Appendix – Laws and Policies

### SEARCH AND SURVEILLANCE ACT 2012

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130. Section 21 of the Search and Surveillance Act 2012 says:

***“Warrantless searches of people found in or on places or vehicles***

*A constable conducting a search of a place or vehicle under section 20<sup>22</sup> may, without a warrant, search any person found in or on the place or vehicle.”*

131. Section 118 of the Search and Surveillance Act 2012 says:

***“Powers of detention incidental to powers to search places and vehicles***

*(1) If any constable or other person, or a person assisting any constable or other person, exercises a search power in relation to a place or vehicle, that constable or other person may, for the purposes of determining whether there is any connection between a person at the place or in or on the vehicle and the object of the search, detain any person—*

*(a) who is at the place or in or on the vehicle at the commencement of the search; or*

*(b) who arrives at the place or stops at, or enters, or tries to enter, the vehicle while the search is being carried out.*

*(2) A person may be detained under subsection (1) for any period that is reasonable, but not for longer than the duration of the search.”*

### CRIMES ACT 1961

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#### Law on the use of force

132. Section 40 of the Crimes Act 1961 says:

***“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*

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<sup>22</sup> Section 20 relates to the warrantless search of places and vehicles in relation to some Misuse of Drugs Act 1975 offences.

*(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.”*

133. Section 48 of the Crimes Act 1961 says:

***“Self-defence and defence of another***

*(1) Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*

## **‘USE OF FORCE’ POLICY**

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134. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers, and firearms.

135. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, and ensure the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.

136. 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:

- 1) the incident type, location, and time;
- 2) the officer and subject’s abilities;
- 3) the subject’s emotional state;
- 4) the influence of drugs and alcohol and the presence or proximity of weapons;
- 5) similar previous experiences with the subject; and
- 6) environmental conditions.

137. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA).



138. 7A key part of an officer's decision about 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:

- 1) cooperative;
- 2) passively resisting (refuses verbally or with physical inactivity);
- 3) actively resisting (pulls, pushes or runs away);
- 4) assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action);
- 5) or presenting a threat of grievous bodily harm or death to any person.

139. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

140. The policy says that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public, and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

## 'POLICE FIREARMS' POLICY

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141. The New Zealand Police are not routinely armed. As such, it is recognised that firearms need to be made available for deployment in such a way that they are accessible, depending on the situation.

142. Employees who carry firearms because their assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the Tactical Options Framework must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable.

143. With the exception of specialist groups, employees must wear ballistic body armour when deploying to an incident where they believe firearms are or could be present. This includes circumstances where routine carriage of firearms has been authorised in response to a specific threat.

144. When dealing with an armed offender or an offender believed to be armed, these basic principles apply:

- An ongoing risk assessment should be conducted during the course of an incident.
- It is better to take the matter too seriously than too lightly.
- Caution is not cowardice.
- When the offender's actions permit, focus on de-escalation, communication, and prevention, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.

- Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, act immediately to prevent this.
- Treat all armed offenders, or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.

145. 'Fire Orders' are operationally specific instructions on the circumstances in which Police employees may use firearms.

146. Every Police employee issued with a firearm is personally responsible for ensuring they are thoroughly conversant with relevant law, particularly sections 39, 40, 41, 48, and 62 of the Crimes Act 1961. Any employee who fires a shot must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so.

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

# 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 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?

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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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