



IPCA

Independent Police
Conduct Authority

Whaia te pono, kia puawai ko te tika

Fatal Police Shooting of Vaughan Te Moananui

October 2016

Contents

Introduction 3

Background 5

The Authority’s Investigation 17

The Authority’s Findings..... 19

Conclusions 29

Applicable Laws and Policies 30



Introduction

1. At about 4.37pm on Saturday 2 May 2015, Police shot and killed Vaughan William John Te Moananui at his sister's house in Thames.
2. The Police notified the Independent Police Conduct Authority of the shooting and the Authority conducted an independent investigation.
3. This report sets out the results of that investigation and the Authority's findings.

Index of Field officers

| Field Staff | Roles/Comment |
|----------------|--|
| AOS Officer 1 | Commander of the Armed Offenders Squad (AOS) - On 2 May 2015 his role was to take command of the AOS deployment and tactics at Kopu and Mr Te Moananui sister's address (the sister's address), Thames |
| AOS Officer 2 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 3 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 4 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 5 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 6 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 7 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 8 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 9 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 10 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 11 | AOS squad member, armed with a Bushmaster M4 rifle |
| AOS Officer 12 | AOS squad member, armed with a Bushmaster M4 rifle |
| Officer A | General Duties Officer (GDB) – attended the gunshots call out |
| Officer B | Constable - GDB Officer (general duties) - attended the gunshots call out |
| Officer C | Constable – Public Safety Team (PST) Officer (general duties) – went to Thames hospital and assisted DAO ¹ |
| Officer D | Constable - PST Officer (general duties) - went to Thames hospital and assisted DAO |
| Officer E | First Incident Controller – CIB Detective |
| Officer F | Constable - assisted DAO |
| Officer G | Waikato Highway officer - assisted with cordons at Kopu |
| Officer H | Waikato Highway officer - assisted with cordons at Kopu |
| Officer I | Waikato Highway officer - assisted with cordons at Kopu |
| Officer J | Second Incident Controller |
| Officer K | Constable - Dog handler, not AOS qualified - only deployed at Mr Te Moananui's sister's address - remained by the AOS Command vehicle at Kopu for the first phase of this incident |

¹ Duly Authorised Officer - A mental health professional, defined by section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 as: "a person who, under section 93, is authorised by the Director of Area Mental Health Services to perform the functions and exercise the powers conferred on duly authorised officers by or under this Act".

Background

EVENTS OF 1 MAY 2015

4. At about 10.30am on 1 May 2015, Vaughan Te Moananui, aged 33, visited the Thames Work and Income office to try and get some extra money to pay his rent. His request was declined. He then visited his landlord and got permission to pay his rent the following week.
5. After this, Mr Te Moananui went to see his niece in Ngatea and asked to borrow some money. She lent him \$20.
6. At about 3.45pm, he sent a text message to his niece to ask her to visit him at his home in Kopu. Kopu is a small town about 5 kilometres south of Thames. When his niece arrived, Mr Te Moananui told her that he was depressed and that he wanted to visit her father, Mr X.
7. His niece drove Mr Te Moananui to Paeroa to visit Mr X. Mr Te Moananui, who did not have a licence to possess a firearm, took his .22 calibre rifle² with him and loaded it on the way, scaring his niece. They met up with Mr X and his partner, Ms Y, and they all went back to Mr Te Moananui's address in Kopu in two different vehicles.
8. Mr Te Moananui's niece left Mr Te Moananui, Mr X and Ms Y at the address, drinking and listening to music. During the evening, a neighbour, Mr Z, also came over.
9. While Mr Z was there, Mr Te Moananui and Mr X had an argument and Mr Te Moananui shot Mr X in his ankle. Mr Z immediately left Mr Te Moananui's address and told his brother, Mr R, what had happened.

EVENTS OF 2 MAY 2015

Call to Police

10. At 2.50am on 2 May 2015, Mr R called 111 and spoke to a communicator at the Police Northern Communications Centre (NorthComms). He told the communicator that he had heard *"about five gun shots in Kopu"* and that *"you go past the Kopu gas station, there's a show home up there called Cherrywood, that's where it's coming from"*. Mr R also gave the communicator his cell phone number.
11. The communicator recorded Mr R's name and that he had heard *"about five gunshots"*. He also recorded that the gun was likely to be a .22 and the shots were approximately five minutes apart.

² Mr Te Moananui obtained the rifle by trading it for a dirt bike. The person who traded it also supplied the ammunition. Police charged that person, for supplying the rifle and the ammunition to an unlicensed person (section 43 Arms Act 1983), and he received a written warning as a result.

12. However, the communicator did not accurately record the location Mr R told him the shots were coming from. He missed entering 'Cherrywood Homes', which was a vital piece of information as it was in the same building as Mr Te Moananui's flat.
13. Two Thames General Duties Branch (GDB) officers, Officers A and B, were sent to the area. The dispatcher told them it was "*a firearms job at Ngati Maru Highway*" (the location was described by Mr R as "*up from the Kopu gas station*") but they could not find the address. The officers drove through the area slowly with their windows down then parked near the service station listening for any gun shots.
14. The officers told the Authority that, when they heard no shots and found no suspicious activity, they thought the shots Mr R heard could have been from duck shooters as it was the first day of the duck shooting season.
15. Officers A and B spoke to a passing newspaper delivery man, who also had not heard anything, so they radioed NorthComms, "*nil seen or heard over*" and the job was closed as 'no further action required'.
16. When interviewed by the Authority, the communicator acknowledged that he could have made more effort to locate the address where the shots had allegedly come from, including ringing back Mr R to check the address.

Mr X goes to Hospital

17. After Mr X was shot, he and Ms Y went to their car to sleep. During the night, Mr Te Moananui forced them at gunpoint back inside and did not allow them to leave. Mr X and Ms Y eventually fell asleep on a mattress in the lounge.
18. When Mr X and Ms Y woke up they found Mr Te Moananui asleep. They left the house and drove to Thames Hospital, arriving at 7.00am. Mr X told the staff at Thames Hospital that the laceration to his ankle was a bullet wound.
19. At 8.41am a Thames Hospital staff member rang 111 and told NorthComms about Mr X's injury. Officers C and D (constables) and Officer E, a Criminal Investigations Branch (CIB) member, were sent to the hospital where they spoke with Mr X. However, Mr X refused to identify who had shot him or how and where it had happened.
20. Ms Y was also reluctant to give the officers any details but she did tell them that Mr X was shot at a two storey Kopu address. Officers C and D took her for a drive to Kopu to see if she could identify the address, but she could not.
21. At this stage Police did not make a connection between the gunshot injury from the .22 rifle and Mr X and Mr R's earlier report of shots being fired at 2.50am.

Involvement of Mental Health

22. At about 9.30am, Mr Te Moananui's mother and step-father went to Mr Te Moananui's house as they were concerned that he had been acting in a threatening manner, sending "*paranoid texts*" to his brother and drinking.
23. Mr Te Moananui ordered his mother and step-father off the property. As they left, they noticed a broken window. Now even more concerned, Mr Te Moananui's mother called the mental health team at the Henry Rongomau Bennett Centre³ in Hamilton.
24. Mr Te Moananui's mother was transferred to a member of the mental health team at Thames Hospital who advised her that he would go and assess Mr Te Moananui. This Duly Authorised Officer (DAO)⁴ told her that he would ask the Police to accompany him due to safety concerns. Mr Te Moananui was under an Indefinite Community Treatment Order⁵.
25. At about 12.07pm, the DAO contacted NorthComms seeking Police assistance to deal with Mr Te Moananui.
26. The DAO told the communicator that Mr Te Moananui becomes violent when unwell, that he thought Mr Te Moananui lived alone and that he would not attend Mr Te Moananui's house without Police assistance.
27. The communicator checked Mr Te Moananui's entry on the Police database and saw that Mr Te Moananui was "*severely mentally unwell*", known to use weapons and to be "*extremely violent*". The communicator arranged for the DAO to meet Police at Mr Te Moananui's address as soon as the officers were available.
28. In the meantime, at about 9.45 am, Mr Te Moananui, had left his home with a friend. At 1.30pm he had been dropped off at his sister's house in Thames. He had taken his firearm, still wrapped up in a blanket and a dozen bottles of beer.

Police go to Mr Te Moananui's Kopu address

29. While the DAO was still on the phone, three officers, Officers C, D and F (also a constable) were assigned to assist him. When they all arrived at Mr Te Moananui's address, the officers and the DAO, and another member of the mental health team, approached with caution because

³ A Mental Health Unit at Waikato Hospital.

⁴ Duly Authorised Officer - A mental health professional, defined by section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 as: "*a person who, under section 93, is authorised by the Director of Area Mental Health Services to perform the functions and exercise the powers conferred on duly authorised officers by or under this Act*".

⁵ Under the Mental Health (Compulsory Assessment and Treatment) Act 1992, the court may make a compulsory treatment order relating to a person who, following assessment, is found to be "*mentally disordered*". Compulsory treatment orders are either: (a) "*inpatient orders*" – where the person is required to be continually detained at a hospital for treatment; or (b) "*community treatment orders*" – where the person is given treatment as an outpatient. This meant that he could be recalled to hospital at any stage when his mental health deteriorated to such a point that he could not be treated as an outpatient.

of the information given to them by the dispatcher. The officers had also been advised that Mr Te Moananui's son could be with him at his house.

30. The mental health workers, with the officers in support, knocked on what they thought was the front door but got no reply. They then walked around the house and located the front door which was accessed from the side stairway. It was when they walked around the house that they noticed Mr Te Moananui's car in the carport and fresh pools of blood at the back of his address.
31. At that point Officers C and D believed that there may be a connection between the 111 call received from Thames Hospital, regarding the shooting of Mr X, and Mr Te Moananui's address. Due to the increased risk, from the possibility that Mr Te Moananui could be armed, the officers went back to their Police car so they could arm themselves with firearms from the car's gun safe.
32. Officers C and D told the Authority that, due to the urgency of the situation, they did not put on their ballistic vests when they armed themselves, as required by Police policy (see paragraph 198)⁶.
33. At 12.42pm, once the officers had armed themselves, Officer D contacted the Senior Sergeant at the Waikato District Command Centre⁷ (DCC) to update him and ask him what to do next. At 12.50pm the Senior Sergeant contacted the Officer in Charge of the Armed Offenders Squad (AOS), AOS Officer 1, to advise him of the situation. AOS Officer 1 then paged the Waikato AOS.
34. At 12.51pm the DCC Senior Sergeant called NorthComms to advise them that the AOS had been paged and to update them about the unfolding events.
35. At 1.10pm NorthComms appointed Officer E the Incident Controller⁸. He identified a safe forward point (SFP)⁹ for AOS, arranged a scene layout, decided on cordon points, briefed and deployed staff, organised the arming of officers at the cordons, prepared a plan for if Mr Te Moananui left the address and provided regular updates to NorthComms, the DCC and AOS Officer 1.
36. Officers G, H and I (all constables from the Highway section) were dispatched and travelled to Kopu to assist with cordons.

⁶ Police have addressed this breach of policy with the officers concerned.

⁷ The main focus of the DCC is to plan, deploy, and monitor the prevention activities across the District. The DCC manages all District deployable resources under the direct command of the District Commander.

⁸ The officer responsible for managing the Police response to an incident. Under Police radio protocols, the communications centre shift commander is the incident controller until that role is formally handed to a field commander.

⁹ A gathering point for briefings, and the allocation of roles and equipment.

Deployment of the AOS and PNT

37. The Waikato AOS officers all travelled to the Hamilton Police Station where they sorted out their equipment before travelling to Kopu. The AOS deployed with their standard equipment, which includes Glock pistols and Bushmaster M4 rifles.
38. AOS Officer 1 briefed the first four officers who were ready and they were sent to the scene straight away so that they could act as an Initial Action Team should anything develop before the full team arrived at Kopu.
39. En route to the SFP, AOS Officer 1 monitored the Police radio channel and approved the Initial Action plan prepared by the Incident Controller, Officer E. The Initial Action plan was to cordon and contain the address and then voice appeal Mr Te Moananui asking him to come out.
40. Thirteen AOS members, three Police negotiators and one dog handler (who was formerly an AOS member) went to the SFP. The officers received a situation briefing from Officer E before AOS Officer 1 briefed the officers on the Initial Action plan, the tactics, and reminded the officers of the Police fire orders¹⁰ (see paragraph 198). The AOS officers were also briefed on Mr Te Moananui's violent history, his deteriorating mental health and the possibility that he was the offender in a shooting overnight so could have access to a firearm.
41. At around 2.12pm, Officer J took over as Incident Controller. Officers at the scene were made aware of the change in command.
42. At about the same time, AOS took control of the inner cordon points closest to Mr Te Moananui's house. AOS Officer 1 planned the best way to safely enter the house, deploying AOS officers into different positions.
43. The AOS officers could not see into Mr Te Moananui's house as the curtains were drawn. As the information from NorthComms was that Mr Te Moananui had been drinking, AOS Officer 1 believed he was likely to be in an intoxicated state, asleep in the house. As a result, he directed officers to throw stones at the windows in an effort to wake Mr Te Moananui or get his attention.
44. While this was happening, PNT (Police Negotiating Team) officers and Thames GDB officers were conducting telephone enquiries to try and confirm Mr Te Moananui's whereabouts, identify his phone numbers and confirm whether his son was with him inside the house. Between 2.30pm and 4.15pm they also appealed to him using a loud hailer, with no response.
45. AOS Officer 1 told the Authority he considered using CS gas¹¹ or sending a Police dog in to clear the address before any officers entered. However, AOS Officer 1 was reluctant to use CS gas in

¹⁰ Fire orders instruct members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act and also sets out the circumstances in which the use of lethal force is justified.

¹¹ Tear gas.

case Mr Te Moananui's son was inside. As Waikato AOS did not have an AOS trained Police dog available, AOS Officer 1 asked NorthComms to try and get one flown down from Auckland.

46. During this time the officers received information, gained from cell phone towers, which confirmed that Mr Te Moananui was still in the Thames area. Also during this period, NorthComms advised AOS Officer 1 that Mr Te Moananui's son had been safely located at his mother's address.
47. At the same time, Mr Te Moananui's step father was also making his own enquiries trying to find Mr Te Moananui, but was unsuccessful.

Events at Mr Te Moananui's sister's address

48. In the meantime, while Mr Te Moananui was at his sister's house (see paragraph 29), he drank beer and took out the firearm he had hidden in the blanket. He told his sister that he had shot someone and he did not want to go back to jail or to the Henry Rongomau Bennett Centre.
49. During the afternoon he twice rang his mother and his son and said "goodbye" to them. Then he told his sister his funeral plans, saying that "he wanted to go out like a gangster, giving Thames something to talk about".
50. As Mr Te Moananui continued drinking, his sister noticed him becoming more irrational and paranoid. At times he was outside shouting and chanting and other times he was reading the bible and blessing her house.
51. Sometime after 3.30pm Mr Te Moananui's sister's partner, Mr U, arrived home. Mr U found Mr Te Moananui outside the house holding his firearm and tried to calm him down. Mr Te Moananui started chanting in Maori and doing a haka, he then removed his clothes other than his underwear and rubbed himself with dirt from the garden. Mr Te Moananui's sister had her two young children in the house and had become scared for their safety.
52. At 4.09pm Mr Te Moananui told his sister to ring the Police so she made a 111 call. Her call was answered by a communicator at the Southern Communications Centre (SouthComms).
53. Mr Te Moananui's sister told the communicator that she was at her house and that her brother, Mr Te Moananui, had a gun and wanted to shoot the Police when they arrived. She said that the gun was a rifle, he had "too much" ammunition, and he was in her driveway doing a haka.
54. As this call was received at SouthComms, the communicator initially knew nothing about the AOS call out at Kopu and the other related events being dealt with by NorthComms.
55. Mr Te Moananui's sister told the communicator that her brother was drunk and suffered from a mental illness. She said that Mr Te Moananui was pacing up and down the driveway and going around the back of the house and she was unsure if he would hurt her or her two children. She told the communicator "he shot someone last night".

56. While Mr Te Moananui's sister was on the phone, Mr Te Moananui began telling her children to look after themselves when he dies. He then went outside and pointed his gun at cars on the road. When she told the communicator this, the communicator advised her to stay in the centre of the house.
57. At 4.23pm, Mr U spoke to Mr Te Moananui outside to try and calm him down. However, Mr Te Moananui continued to be aggressive and demanded that Mr U go and get him some whiskey.
58. When Mr U came inside, Mr Te Moananui's sister told him that she was on the phone to the Police. As Mr U had seen the Police at Kopu on his way home, he decided to go back and speak to them to get some help. At 4.29pm, Mr Te Moananui's sister hung up from the Police.

AOS move from Kopu to sister's address

59. Meanwhile, AOS Officer 1 heard over the Police radio that Mr Te Moananui was at his sister's address. He told the Authority he was surprised that, as the Officer in charge of AOS, he had not been called. AOS Officer 1 spoke to AOS Officer 2 and made a decision to send an Initial Action team consisting of AOS Officers 2-8 to Mr Te Moananui's sister's address, about six minutes away.
60. AOS Officers 9, 10, 11 and 12 stayed at Kopu and maintained a cordon and observation role. The other AOS officers went to the SFP, in Kopu, where they were briefed before deploying to the sister's address.
61. Officer J, Incident Controller, was part of this briefing. The plan was for the AOS officers to deploy close to the address first, with the Public Safety Team (PST) setting up outer cordons afterwards. AOS Officers would then cordon and contain the scene and voice appeal to Mr Te Moananui to surrender.
62. Between 4.23pm and 4.30pm the AOS left the Kopu SFP. The drive time at speed to the sister's address is about four to six minutes.
63. AOS Officer 1 and the Incident Controller deployed an Initial Action team of AOS officers to the following positions:
 - AOS Officers 4 and 5 to cover the left front and rear of house;
 - AOS Officers 6, 7 and Officer K¹² covered the right side of the house. Officer K had a Police dog with him;
 - AOS Officers 2, 3 and 8 deployed across the road to cover the right front of the house; and

¹² Officer K was a dog handler but the dog was not AOS trained. As there was no AOS dog in the district, and no time to get one down from Auckland, AOS Officer 1 made the decision to deploy Officer 8 in case Mr Te Moananui left the address and tracking was required.

- AOS Officer 1 stayed in the AOS Command vehicle.
64. All the AOS staff deploying to the sister's address parked their vehicles a distance back and approached on foot maintaining cover as they did so.
65. Officer J had decided that the PST and Highway officers deployed at cordons at Mr Te Moananui's Kopu address should stay in position. However, one of the Highway officers, Officer G, decided to leave his Kopu cordon position and drive to the sister's address, picking up Officer C on the way. Neither officer told the Incident Controller, AOS or NorthComms of this decision. They both positioned themselves in nearby Bella Street without the AOS knowing.

THE SHOOTING

66. As AOS Officer 6 approached the house from the right, he saw Mr Te Moananui standing at the right rear corner of the house carrying a firearm. Mr Te Moananui saw AOS Officer 6 at the same time. As a result of being seen, AOS Officer 6 shouted to Mr Te Moananui, "*Armed Police put your weapon down*" a number of times.
67. From their position, AOS Officers 2, 3 and 8 said they heard Mr Te Moananui say to AOS Officers 6 and 7, "*What do you want?*" and "*fuckin shoot me.*"
68. Mr Te Moananui ignored AOS Officer 6's instructions and walked behind the house. AOS Officers 6 and 7 could still see him and kept calling for him to drop his weapon. They told the Authority that Mr Te Moananui's actions, in not dropping his weapon, led them to fear for their safety. In response, they switched the safety catch on their rifles from 'safe' to 'fire' and aimed them at Mr Te Moananui.
69. At about this time, Mr Te Moananui's sister suddenly came out of the front of her house with her two young children. AOS Officers 2, 3 and 8 called her to come towards them and she ran across the road and continued to safety behind the officers.
70. AOS Officer 8 said that when he saw the terrified look on Mr Te Moananui's sister's face he was worried that Mr Te Moananui might shoot her, or that something had happened inside the house, so he initially aimed his firearm at the house to provide protection for her.
71. At this point, Mr Te Moananui came around the right of the house and started walking along the side of the house towards the front. AOS Officer 6 told the Authority that Mr Te Moananui was holding his gun in both hands in front of him but he was not pointing it at anything. Both Officers 6 and 7 said they kept calling for him to drop his weapon.
72. As Mr Te Moananui walked towards the front of the house, AOS Officers 6 and 7 saw that he was now focused on AOS Officers 2 and 3 who were in front of a house across the road. AOS Officer 8 was covering them from behind.

73. AOS Officer 8 told the Authority that the three officers, particularly AOS Officer 3, were screaming at Mr Te Moananui, *“Put down your gun, put down your fucking gun.”* When this occurred, AOS Officers 6 and 7 stopped voice appealing but kept their weapons in the aim position.¹³
74. AOS Officers 2 and 3 told the Authority that when Mr Te Moananui got to the front of the house he started to lift his firearm up from a 45 degrees angle, and put his left hand on the front of the firearm, as if to aim at AOS Officers 2 and 3.
75. AOS Officer 3 said, *“as soon as he stepped out he just sort of zeroed in on me and the two others and when he advanced down that path he was walking hard and he – I don’t remember him ever looking anywhere else except at us”*. AOS Officer 3 further said that he continuously told Mr Te Moananui to put down his gun. However, he walked quickly towards them and as he did, *“he began to move his left hand towards the front stock of the rifle”*. AOS Officer 3 interpreted this movement as Mr Te Moananui bringing the rifle up into an aim position.
76. AOS Officer 2 told the Authority, *“he’s already shot somebody, or we believed he had. He’s got a firearm. He’s been confronted by the Police. He’s still not doing what he’s told. He’s been given every opportunity to surrender and he hasn’t. He’s staring right at us and my belief was that he was gonna kill us or try and shoot us”*.
77. AOS Officer 3 told the Authority that he responded by firing one shot from his rifle. He said that he heard AOS Officer 2, to his left, also fire a shot. AOS Officer 3 said, *“these two shots were almost simultaneous. It was a “bang, bang”*.
78. AOS Officer 2 told the Authority that before he fired, *“I thought he was gonna kill us, I thought that’s what his intention was, yeah. I genuinely believed he was gonna take a shot at us”* so he fired his rifle at him.
79. AOS Officer 3 told the Authority, *“between me saying it the first time and him raising the firearm to me to when I’ve shot him, I’ve said it – I’ve challenged him five times”*. He told the Authority that there is no way that Mr Te Moananui did not hear the officers issuing these challenges.
80. AOS Officer 2 was unable to contact AOS Officer 1 to tell him what had happened as there were problems with the AOS radio channel¹⁴ At 4.37pm, Officer K who had a standard Police radio called NorthComms and advised that shots had been fired, *“one was in custody”* and they were administering first aid. He requested an ambulance and asked other officers to come to the scene.
81. The Authority has estimated that there were only a few minutes between the AOS first challenging Mr Te Moananui and him being shot.

¹³ Brought the weapon up to eye level and aimed at the target.

¹⁴ The AOS have a separate encrypted radio channel that is different from the standard Police radio.

Events immediately after the shooting

82. When officers approached, they found Mr Te Moananui lying on his back on the grass alongside the footpath. A .22 rifle, with a scope fixed to it, was next to him on the ground.
83. AOS Officers 3 and 8, the AOS squad medics, immediately started giving him first aid.
84. Officers C and G who had positioned themselves on Bella Street, saw Mr Te Moananui get shot. As Officer G had previously worked as a paramedic, they immediately decided to leave their position and drive to the address to assist.
85. AOS Officer 2 directed the AOS officers, not involved in administering first aid, to clear the sister's house and garage. Nobody else was found inside.
86. As an ambulance had been called to the SFP earlier it did not take long to arrive at the sister's address. The ambulance officers gave immediate first aid to Mr Te Moananui at the scene and then took him to Thames Hospital, where he was pronounced dead.
87. At 4.40pm AOS Officer 1 arrived at the scene of the shooting and received a briefing from AOS Officer 2. Officer J, Incident Controller, arrived shortly afterwards.

POST-INCIDENT EVENTS

Handover of the scene

88. As required by Police policy, Officer J, Incident Controller, directed that all officers involved in the shooting leave the scene. Other AOS Officers maintained the cordons to keep the scene secure and preserve evidence until it could be handed over to the PST and investigation team officers.
89. The '*Police Firearms*' chapter of the Police Manual outlines what actions must be immediately taken when Police firearms are discharged in operational situations (see paragraph 203). It states that the senior employee present must, "*preserve the cartridge case and where possible the bullet or bullet fragments.*" They must also, "*secure the firearm and remaining rounds*". It further states, "*on no account is the firearm to be altered or items/accessories removed. It must be secured in the state at which it was at the time of firing.*"
90. As there was media present at the scene, AOS Officer 1 was concerned that the two AOS officers, who had shot Mr Te Moananui, would be identified. He therefore told all the AOS officers to travel to the Thames Police Station and he advised them to not talk about what happened and to keep their rifles in the same state. However, as all the Thames Police officers had been deployed to the scene, when the AOS officers arrived they found the station locked.
91. AOS Officer 1 then decided that the AOS officers should return to Hamilton and AOS Officers 2 and 3 could hand their firearms to the investigation officers there.

92. At 7.27pm and 7.40pm AOS Officers 2 and 3 handed over their rifles to investigation officers at the Hamilton Police Station.

Examination of the scene

93. Police commenced a scene examination of the sister's address, assisted by forensic scientists from the Institute of Environmental Science and Research (ESR).

Alcohol testing of officers

94. All AOS officers involved underwent breath alcohol tests, the results of which were negative.

MR TE MOANANUI

95. Mr Te Moananui was aged 33 years old at the time of this incident.
96. Mr Te Moananui was well known to Police. In May 2015, he was subject to an indefinite Community Treatment Order¹⁵ under the Mental Health Act after being released from the Henry Rongomau Bennett Centre in Hamilton in April 2014.

KEY POLICE OFFICERS INVOLVED

97. AOS Officer 1 is a highly experienced AOS Commander with 16 years' service at the time of this incident and had been a member of the AOS for 13 years. He is currently second in charge of the Waikato AOS.
98. AOS Officer 2 had 18 years' service and attended the AOS Qualification Course in 2005. He is current and qualified in all aspects of the AOS training, including first aid.
99. AOS Officer 3 had 13 years' service at the time of this incident and has been a member of the AOS since 2010. He is current and qualified in all aspects of AOS training, including first aid.

POST MORTEM

100. On 3 May 2015, a forensic pathologist conducted a post mortem examination of Mr Te Moananui at Auckland Hospital.
101. The forensic pathologist determined that the cause of Mr Te Moananui's death was "*gunshot injuries to chest*".

¹⁵ Under the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Court may make a compulsory treatment order relating to a person who, following assessment, is found to be "*mentally disordered*". Compulsory treatment orders are either: (a) "*inpatient orders*" – where the person is required to be continually detained at a hospital for treatment; or (b) "*community treatment orders*" – where the person is given treatment as an outpatient. This meant that he could be recalled to hospital at any stage when his mental health deteriorated to such a point that he could not be treated as an outpatient.

102. The post mortem revealed that Mr Te Moananui received two gunshot wounds. One gunshot wound was to the front left side of his chest, the other gunshot wound was to the top and back of his left shoulder.
103. The pathologist determined that *“either of these injuries may have been a fatal injury in their own right”* and it was not possible to determine the order of the shots.

The Authority's Investigation

THE AUTHORITY'S ROLE

104. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
 - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
105. The Authority's role on the completion of an investigation is to form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint.

THE AUTHORITY'S INVESTIGATION

106. As required under section 13 of the Independent Police Conduct Authority Act 1988, on 3 May 2015 Police notified the Authority of the shooting of Mr Te Moananui.
107. The Authority immediately commenced an independent investigation and spoke with Mr Te Moananui's family and the Police officers involved. The Authority also visited the Kopu scene and scene of the shooting on 3 May 2015. The Authority interviewed all of the key officers involved as well as the NorthComms communicator, dispatcher and supervisor.
108. On 15 June 2015, the Authority received a complaint from Mr Te Moananui's sister. She complained that the Police would not provide her and her children specialist trauma counselling. This has now been attended to by Police.
109. The Authority also monitored the Police investigation and reviewed all documentation obtained and produced by the Police investigation team.
110. The Authority maintained contact with Mr Te Moananui's family during the subsequent Police and Authority's investigation.

ISSUES CONSIDERED

111. The Authority's investigation considered the following issues:
- 1) Did Police take all reasonable steps to respond to the initial report of gunshots at a Kopu address?
 - 2) Did Police take all reasonable steps to respond to Thames Hospital's 111 call regarding a gunshot wound to Mr X?

- 3) Did Police respond appropriately to the developing situation at Mr Te Moananui's Kopu address?
- 4) Did Police respond appropriately and in a timely manner to the 111 call from the sister's address and the developing situation?
- 5) Were tactical options other than the use of firearms available and considered?
- 6) Were AOS Officers 2 and 3 justified in shooting Mr Te Moananui?
- 7) Did Police comply with all requirements in respect of communications, and command and control, at the Kopu and sister's addresses; if not, did any failings contribute to the outcome?
- 8) Was all reasonable assistance given to Mr Te Moananui after he was shot?

The Authority's Findings

ISSUE 1: DID POLICE TAKE ALL REASONABLE STEPS TO RESPOND TO THE INITIAL REPORT OF GUNSHOTS AT A KOPU ADDRESS?

112. Mr R called 111 at 2.50am on 2 May 2015. He spoke to a NorthComms communicator advising that he had heard gun shots coming from the Cherrywood Show home.
113. The NorthComms communicator did not record 'Cherrywood Homes' as the location of where the shots were fired. As a result, the dispatcher was not able to pass this information to the responding officers.
114. As Mr Te Moananui's house was at the same address as the Cherrywood Show home, it is likely that if the Police officers had been given this information they would have been able to locate Mr Te Moananui's home and deal with the incident that had just occurred.
115. When the officers reported to the NorthComms dispatcher that they heard no shots and found no suspicious activity, they closed the job as 'no further action required'.
116. However, the NorthComms communicator had recorded Mr R's phone number. The Authority is of the opinion that, given the report was of multiple gun shots, NorthComms should have telephoned Mr R back to clarify the location.
117. In interview, the NorthComms communicator acknowledged to the Authority that he should have made more effort to locate the address where the shots had come from.

FINDINGS

The communicator failed to record critical information about the location of where the shots were fired from. This omission directly affected the attending officers' response.

Given that the information provided to NorthComms was regarding multiple gunshots, NorthComms should have made more effort to find out the exact location.

ISSUE 2: DID POLICE TAKE ALL REASONABLE STEPS TO RESPOND TO THAMES HOSPITAL'S 111 CALL REGARDING A GUNSHOT WOUND TO MR X?

118. At about 8.40am an employee of Thames Hospital called 111 reporting that a male had been brought to the hospital with a gunshot wound to his ankle. Officers C, D and E went to Thames Hospital and spoke with Mr X who refused to identify who had shot him or how and where it had happened.
119. Mr X's partner, Ms Y, was also reluctant to provide any useful information. Despite this, Officers C and D drove Ms Y to Kopu to try and identify the address where the shots had been fired. The address was not located.

120. At this stage Police did not have any information to make a connection between the gunshot injury to Mr X and Mr R's earlier report of shots being fired at a Kopu address.

FINDING

The officers took all reasonable steps, and acted in accordance with best practice, in responding to Thames Hospital's call regarding a gunshot injury to Mr X.

ISSUE 3: DID POLICE RESPOND APPROPRIATELY TO THE DEVELOPING SITUATION AT MR TE MOANANUI'S KOPU ADDRESS?

Assisting the DAO

121. At about 9.30am on 2 May 2015, Mr Te Moananui's mother contacted the Henry Rongomau Bennett Centre and advised them of her concerns for her son. In response, the DAO contacted NorthComms to request Police assistance, due to the risk Mr Te Moananui was believed to pose. Three officers were dispatched to assist the DAO to go to Mr Te Moananui's house in accordance with policy (see paragraph 210).
122. The officers and the DAO, and another member of the mental health team, got no reply when they knocked on the front door but noticed that Mr Te Moananui's car was in the carport and there were fresh pools of blood at the back of the address.
123. It was at this point that the officers made the likely connection between the shooting victim at Thames Hospital and Mr Te Moananui's address. They also considered that it was likely that Mr Te Moananui was armed.
124. Due to the increased risk now connected with Mr Te Moananui, the officers armed themselves with firearms from the gun safe in their Police vehicle, began to cordon off the address and contacted the DCC to arrange for the Waikato AOS to be called.

Actions of the AOS

125. Police policy and practice requires that the first officers responding to an armed offender should cordon the area. Cordons are to be set up to contain the offender, to keep people and vehicles out, and to clear streets and buildings.
126. When AOS members arrive, they take over responsibility for containing the offender. Until they arrive, that responsibility rests with General Duties Branch (GDB) staff, who are to maintain positions from which to provide information to the Communications Centre and the Incident Controller. A safe forward point (SFP) is also set up.

127. The Waikato AOS was paged at 12.50pm. At the Hamilton Police Station, AOS Officer 1 briefed the first four officers who were ready and they were sent to Mr Te Moananui's address in Kopu straight away so that they could act as an Initial Action Team should anything develop before the full team arrived at Kopu.
128. On arrival at the Kopu SFP, the AOS officers received a briefing from the Incident Controller, Officer E before AOS Officer 1 briefed the officers on the plan, the tactics, and the fire orders.
129. The immediate approach of officers who attended the Kopu address was to cordon the house, try to contain Mr Te Moananui within it, and then voice appeal.
130. The AOS officers who attended the Kopu address had been briefed on Mr Te Moananui's violent history, his deteriorating mental health and the possibility that he was the offender in a shooting overnight so could have access to a firearm. They were told that Mr Te Moananui had acted aggressively towards his parents, had reportedly been drinking and there was damage at his address. He was required to be located and arrested.
131. At 2.12pm the AOS took control of the inner cordons that had been set up around Mr Te Moananui's address. The AOS officers believed that Mr Te Moananui was drunk and had fallen asleep inside. They were also concerned that his son could be with him.
132. From 2.30pm to 4.15pm the AOS officers telephoned and voice appealed to Mr Te Moananui using a loud hailer, with no response. They also threw stones at his window, hoping to attract his attention.
133. AOS Officer 1 considered other tactical options such as the use of CS gas or gaining entry with a Police dog to clear the Kopu address before anyone entered. However, he was reluctant to use CS gas in case Mr Te Moananui's son was inside (see paragraph 45) and there was no AOS trained Police dog available.
134. The AOS officers were still cordoning and developing a plan to enter the address when at 4.15pm news came that a situation had developed at the sister's address.

FINDINGS

Police correctly decided to accompany the DAO to Mr Te Moananui's address and their actions were consistent with Police policy, practice and procedure in respect of dealing with a person with mental illness.

Once Mr Te Moananui and his address were linked to the injury to Mr X, Officers C, D and F were justified in arming themselves. The first officers on the scene at the Kopu address correctly requested that AOS be paged and further officers be deployed.

The AOS performed their duties in a manner consistent with Police policy. The tactics chosen by AOS Officer 1 were appropriate and reasonable in the circumstances.

ISSUE 4: DID POLICE RESPOND APPROPRIATELY AND IN A TIMELY MANNER TO THE 111 CALL FROM THE DAO AND THE DEVELOPING SITUATION?

135. At 4.09pm, while AOS Officer 1 was working on a plan to enter the Kopu address, a 111 call was received at SouthComms from Mr Te Moananui's sister advising Police that her brother had a gun at her house in Thames. She told the communicator her brother's name and said that he was waiting for the Police to arrive, *"He says he's gonna shoot them"*.
136. However, as the SouthComms communicator had no knowledge of what was occurring in Kopu, she could not link the incidents together.
137. As a result, AOS Officer 1 was not contacted about the second incident. However, at about 4.11pm, he heard officers being dispatched to it over the Thames Police radio channel.
138. AOS Officer 1 decided to send an Initial Action team of AOS Officers to the sister's address. These officers were briefed at the SFP in Kopu before leaving for the sister's address. Officer J, Incident Controller, was at the briefing and decided with AOS Officer 1 that the AOS officers would deploy first and surround the house creating an inner cordon. The PST officers would create an outer cordon afterwards.
139. The AOS officers who went to the sister's address had been told that Mr Te Moananui had a firearm and he wanted to shoot the Police when they arrived. They had also been informed of his irrational behaviour and the fact that he had been doing a haka and chanting, taking his clothes off and covering his torso in mud and aiming his firearm at passing cars.
140. The AOS was deployed to the sister's address, from the SFP, almost immediately and they divided into groups and approached the address under cover, to cordon it, in accordance with standard operating guidelines (see paragraph 200). The Initial Action plan was to cordon the address and contain Mr Te Moananui, then voice appeal him to surrender.
141. The AOS officers formed the view that Mr Te Moananui was a high risk to the public and to Police. The Authority is satisfied that based on their assessment of the threat Mr Te Moananui would present, the AOS officers were justified and authorised in arming themselves in accordance with relevant Police policies. The officers had earlier been reminded of their obligations when dealing with firearms.

FINDINGS

As soon as AOS Officer 1 became aware of the events at Mr Te Moananui's sister's address, he made a plan for AOS to attend the scene.

The initial deployment of an AOS Initial Action team to the sister's address was timely and appropriate and complied with Police policy.

ISSUE 5: WERE TACTICAL OPTIONS OTHER THAN THE USE OF FIREARMS AVAILABLE AND CONSIDERED?

142. Other than the use of firearms, options that can be considered by Police when dealing with a violent offender include:
- cordon and containment;
 - retreat or delaying an arrest;
 - using CS gas;
 - using pepper spray¹⁶ and/or a baton;
 - using a Taser; and
 - using Police dogs.
143. Standard Police practice when dealing with an armed offender is to cordon the area and verbally appeal to the offender in order to negotiate surrender (if the offender's actions permit).
144. The AOS officers who deployed to the sister's address knew that Mr Te Moananui was armed with a rifle, that he was irrational, angry and wanted Police to shoot him. They also knew that Mr Te Moananui's sister and two children were in the house and were scared for their safety.
145. When the AOS officers arrived at the sister's address they were confronted by Mr Te Moananui, who had a rifle, before they could implement other tactical options. The Initial Action team were still in the process of cordoning the house. Other officers were still enroute and outer cordons had not yet been set up.
146. Retreat or delay in arresting Mr Te Moananui was not an appropriate tactical option considering the immediate threat he posed to his sister, and her family, members of the public and the Police officers present.
147. The use of CS gas, pepper spray, a baton, a Taser or a Police dog were not appropriate in the circumstances because they all require the officer using them to get very close to the offender. In this instance, Mr Te Moananui was carrying a loaded, raised firearm and had threatened to fire his weapon if he saw Police.
148. The incident unfolded very quickly. PNT had not arrived at the sister's address to try to negotiate a surrender before Mr Te Moananui was shot.

¹⁶ Pepper spray is also referred to as Oleoresin Capsicum or 'OC' spray.

FINDINGS

Police did consider tactical options, other than firearms, at the Kopu address.

The AOS were in the process of cordoning and containing Mr Te Moananui at his sister's address when Mr Te Moananui confronted them with a firearm. Once that occurred, other tactical options were not viable or appropriate.

ISSUE 6: WERE AOS OFFICERS 2 AND 3 JUSTIFIED IN SHOOTING MR TE MOANANUI?

149. The Authority has considered whether the lethal force used by AOS Officers 2 and 3 was lawfully justified under the relevant provisions of the Crimes Act (see paragraphs 183-185).
150. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm (see paragraph 202).
151. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to effect an arrest or disarm an offender if they are available. However, if further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender.
152. In this case, AOS Officers 2 and 3 told the Authority that as Mr Te Moananui walked towards the front of the house, he ignored their appeals for him to drop his weapon, and kept walking towards them with his gun raised, as if he was getting ready to fire it. Both officers believed that Mr Te Moananui was going to fire at them.
153. Other officers heard AOS Officers 2 and 3 clearly telling Mr Te Moananui to put his weapon down, and some said they also yelled at him to surrender. They told the Authority that they believed they had no option, other than firing, to stop Mr Te Moananui from harming them or others.
154. AOS Officer 3 told the Authority, *"as soon as he stepped out he just sort of zeroed in on me and the two others and when he advanced down that path he was walking hard and he – I don't remember him ever looking anywhere else except at us"*. AOS Officer 3 said Mr Te Moananui walked quickly towards them as he did so *"he began to move his left hand towards the front stock of the rifle"*. At that moment AOS Officer 3 believed Mr Te Moananui was bringing the rifle up to fire at him.
155. AOS Officer 2 told the Authority, *"he's been given every opportunity to surrender and he hasn't. He's staring right at us and my belief was that he was going to kill us or try and shoot us"*. He said further, *"there's no other options that I had available to me to be able to effect that arrest or to stop him and protect other people"*.
156. The Authority is satisfied that AOS Officers 2 and 3 believed that Mr Te Moananui posed an immediate threat of death or grievous bodily harm to them, and the other officers, when he confronted them with his firearm.

157. The Authority finds that, AOS Officers 2 and 3 were lawfully justified in using a firearm to try to prevent Mr Te Moananui from shooting them or their fellow officers. This was the only viable tactical option available to AOS Officers 2 and 3 when Mr Te Moananui refused to drop his weapon, when called to do so, and continued advancing on the officers.

FINDING

Both AOS Officers 2 and 3 were justified under section 48 of the Crimes Act 1961 and Police policy in shooting Mr Te Moananui.

ISSUE 7: DID POLICE COMPLY WITH ALL REQUIREMENTS IN RESPECT OF COMMUNICATIONS, AND COMMAND AND CONTROL, AT THE KOPU AND SISTER'S ADDRESSES; IF NOT, DID ANY FAILINGS CONTRIBUTE TO THE OUTCOME?

158. Command and control is widely and variously described in the context of military and Police operations. In essence, command is the exercise of authority and direction by a properly designated commander for the purpose of accomplishing a task – and includes responsibility for effectively controlling the available resources for that purpose.
159. The 'Radio Protocols' chapter of the Police Manual in force at the time of this incident, sets out Police communication requirements and incident control responsibilities (see paragraphs 178-182). That policy makes clear that the communications centre shift commander is responsible for leading the overall Police response until such time as incident control is formally handed over to a suitable officer in the field.
160. It is then the Incident Controller's role to stand back and have oversight of the entire incident so that resources can be managed effectively and risks properly assessed. The Incident Controller has ultimate responsibility for all actions and decisions during the incident.
161. At 12.50pm, following reports from the first responders to the Kopu address, the Senior Sergeant in the Waikato District Command Centre contacted AOS Officer 1 and he called out the AOS (see paragraph 33).

Kopu

162. As required by Police policy, Officer E, the first Incident Controller at the Kopu address, identified a SFP for AOS, arranged a scene layout, decided on cordon points, briefed and deployed staff, organised the arming of officers at the cordons, prepared a plan for if Mr Te Moananui left the address and provided regular updates to NorthComms, the DCC and AOS Officer 1.
163. The Authority considers that the scene at Kopu was well controlled by Officer E.

164. At about 2.12pm, Officer J took over as Incident Controller. This was around the time the AOS arrived at Kopu. He was part of AOS Officer 1's briefing at the Kopu SFP before deploying to the sister's address.
165. The Authority is satisfied that the handover between Incident Controllers was clear and that, at all times, officers knew who was in charge.

Sister's address

166. Officer J was the Incident Controller when the 111 call came in advising that Mr Te Moananui was at his sister's address. He and AOS Officer 1 agreed a plan:
- that the AOS Initial Action team deploy first under cover and surround the address;
 - PST set up outer cordons afterwards;
 - officers would then cordon and contain Mr Te Moananui; and
 - and voice appeal him to surrender.
167. This plan was tactically sound and complied with Police policy. The plan and updates were communicated to NorthComms and AOS Officer 1.
168. As it transpired, the Initial Action team had only just arrived at his sister's address, when Mr Te Moananui saw AOS Officer 6, he failed to comply with orders to drop his firearm and the AOS were forced to engage with Mr Te Moananui.

FINDING

Officers E, J, the NorthComms and DCC Supervisors, and AOS Officer 1, all complied with Police policy and good practice in their command and control of this incident.

ISSUE 8: WAS ALL REASONABLE ASSISTANCE GIVEN TO MR TE MOANANUI AFTER HE WAS SHOT?

169. Immediately after Mr Te Moananui was shot, AOS Officers 3 and 8, who were medics on the AOS squad, plus a general duties officer, Officer G, provided immediate first aid to Mr Te Moananui in an effort to save his life.
170. An ambulance was already at the SFP. The paramedics quickly took over administering first aid to Mr Te Moananui and transported him to hospital, where he was pronounced dead.

171. Officer G's arrival at the scene, before it had been declared safe by AOS officers, was in conflict with good practice and procedure. However, Officer G had specialised medical training and went forward to give immediate first aid to Mr Te Moananui. In the circumstances, the Authority understands his actions.

FINDING

Police provided all reasonable assistance to Mr Te Moananui after he was shot.

Conclusions

172. The Authority has concluded, on the balance of probabilities, that AOS Officers 2 and 3 were justified in shooting Mr Te Moananui. At the time the officers fired, Mr Te Moananui was pointing his rifle at them and they feared for their lives.
173. The Authority also finds that Police acted appropriately and in accordance with policy and best practice when they:
- responded to the call from Thames Hospital regarding a gunshot injury;
 - accompanied the DAO to Mr Te Moananui's Kopu address;
 - armed themselves once they realised that Mr Te Moananui and his address were linked to the injury to Mr X; and
 - when they paged the AOS.
174. The tactics chosen by AOS Officer 1 at both the Kopu and sister's addresses, were appropriate and complied with Police policy. The AOS response to the developing incident at the sister's address was timely and proportionate. Once the officers were confronted by Mr Te Moananui and his rifle, other tactical options were not viable or appropriate.
175. The NorthComms Shift Commanders, Incident Controllers in the field and AOS Officer 1 all complied with Police policy and good practice in their command and control of this incident.
176. Police provided all reasonable assistance to Mr Te Moananui after he was shot.
177. However, the Authority finds that the communicator failed to record critical information about the location of where the shots were fired from. This omission directly affected how the attending officers dealt with the job. Given that the information provided to NorthComms was regarding multiple gunshots, NorthComms should have made more effort to find out the exact location.



Judge Sir David Carruthers

Chair

Independent Police Conduct Authority

20 October 2016

IPCA: 14-2072

Applicable Laws and Policies

INCIDENT CONTROL & COMMUNICATION

178. The 'Radio Protocols' chapter of the Police Manual in force at the time of this incident sets out communication requirements and incident control responsibilities when Police are responding to incidents. The policy states that: *"An efficient and effective Police response to incidents requires that everyone involved in the process clearly understands their own role and responsibilities, and those of the other participants."*

Incident control

179. Under the policy, the communications centre is responsible for the initial Police response to an incident. This responsibility to act as the 'incident controller' formally lies with the communications centre shift commander; although in practice a team leader or dispatcher is often delegated to take this role.
180. For as long as the communications centre retains the responsibility for incident control, officers at the scene must comply with the directives given by the shift commander (or by the delegated team leader or dispatcher). The shift commander makes the final decision on operational matters and *"is expected to actively manage, direct and supervise those staff responding to the incident, including initial tactics to be utilised"*.
181. The policy provides that the communications centre retains the responsibility for incident control until that role is formally passed to a suitable officer in the field, preferably ranked sergeant or above, who is willing to assume command. The policy sets out formal procedures for handing over this responsibility, and states that incident control will not be handed over to a field supervisor until he or she has arrived at a safe forward point, been fully briefed, and formed a tactical response plan.
182. Once incident control has passed to a field unit, the shift commander is still required to maintain active oversight of the Police response. This may include engagement with the incident controller over tactics and timing, peer support and mentoring, and advice about legislative powers. Even after incident control is handed over, there may be situations where the field supervisor is no longer best placed to manage the Police response, and so the shift commander may take back incident control. One example of when this may occur is when the offender is mobile.

Law on the use of force

Use of force by Police officers

183. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*

Use of force for self-defence or defence of others

184. Section 48 of the Crimes Act states: *“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.”*

185. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

General guidance on the use of force

186. 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.

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

188. An officer 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.

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

190. 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.

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

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

CARRIAGE AND USE OF FIREARMS

Authorisation to carry firearms

193. The Police Manual authorises officers who hold the position of sergeant or above, and officers who are authorised by a district or communications centre supervisor, to carry firearms when there is "*clear and specific evidence*" that they may encounter circumstances in which they may be required to use a firearm.

Use of firearms

194. Police General Instruction F061 (Use of Firearms) provides that Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape, in the circumstances referred to in paragraph 193 and in accordance with the Crimes Act provisions referred to in paragraphs 183-185.

195. The instruction reminds officers that "*An overriding requirement in law is that minimum force must be applied to effect the purpose.*" It also says that: "*Where practical, Police should not use a firearm unless it can be done without endangering other persons.*"

196. General Instruction F061 directs that an offender is not to be shot until all of 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*
- *further delay in apprehending the offender would be dangerous or impractical.”*

197. Additionally officers may carry Police issue firearms while performing duty as a member of the AOS.

198. The Police Manual sets out the following requirements when officers arm themselves:

- 1) *Notification of Comms:* In any case where Police arm themselves to attend an incident, or are already at an incident and carry firearms, they must notify the communications centre that they are armed.
- 2) *Body armour:* Authorised ballistic body armour must be worn while a firearm is carried or when Police attend or expect to attend an armed incident.
- 3) *Fire Orders:* Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law, particularly sections 39, 40, 41, 48 and 62 of the Crimes Act 1961; General Instruction F061; and all relevant instructions and guidelines in the Police Manual. When firearms are issued, if time and circumstances permit, supervisors must draw officers’ attention to the ‘Fire Orders’, which set out the circumstances in which Police officers may use firearms. These are printed on the inside cover of Police notebooks and are also stored in vehicle firearm security cabinets.

Responding to armed offenders

AOS and PNT

199. The Police Manual outlines the role of AOS in an armed incident. Where time and the offender’s actions permit, all forward operations against armed offenders, particularly any direct approaches to the offender, must be carried out by AOS members assisted by the Police negotiation team (PNT).

Principles for responding to armed offenders

200. The ‘Firing at offenders’ section of the Police Manual sets out the basic principles for Police responding to an armed incident:

“When dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:

- *It is better to take the matter too seriously than too lightly.*

- *Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.*
- *Make every effort to prevent casualties.*
- *Caution is not cowardice. When the offender's actions permit, cordon the area, and adopt the wait and appeal role in order to negotiate surrender.*
- *Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this."*

Firing at offenders

201. The 'Police Firearms' section of the Police Manual contains a section on 'Firing at offenders'. That section also reminds officers of the Crimes Act provisions and the need to use the minimum force necessary to achieve the objective. It states that the "*circumstances justifying Police firing at an offender can change very rapidly*", and any officer who fires a shot "*must be personally satisfied there is justification for doing so*".
202. The Police Manual reminds officers of the circumstances in which they are able to claim self-defence under section 48 of the Crimes Act, and states: "*There is no justification for firing at a suspect when they are no longer a threat to life. This applies regardless of the suspect's previous actions.*"

What to do immediately when firearms are discharged

203. The 'Police Firearms' chapter of the Police Manual outlines what actions must be immediately taken when Police firearms are discharged in operational situations. The manual states that Police officers must complete a Tactical Options Report and the senior employee present or the person appointed to do so must take these actions immediately (or at the first safe opportunity):
- 1) If necessary render first aid when safe to do so and contact medical emergency services.
 - 2) Mark the discharging employee's position, the empty cartridge case, bullet fragments, injured or deceased people, and any other items or people associated with the discharge.
 - 3) Preserve the cartridge case and, where possible, the bullet or the bullet fragments.
 - 4) Secure the firearm and remaining rounds. (On no account is the firearm to be altered or items/accessories removed. It must be secured in the state at which it was at the time of firing).
 - 5) Either:

- Advise the employee's immediate supervisor who will promptly advise the District Commander, or
- If the discharge has been unintentional, follow the procedure for reporting and investigating unintentional discharges.

Police involvement in in deaths and serious injuries

204. The 'Police involvement in deaths and serious injuries' chapter of the Police Manual provides that Police must treat the scene (where an officer has caused death to serious injury to someone) as they would any other serious crime scene.

205. The policy also states that:

"The incident controller, O/C of the Police operation or of any specialist squad involved in the incident, or the area commander (whoever is most appropriate) must:

submit a report to the district commander, Commander AMCOS, or the employee's national manager outlining the circumstances of the incident before going off duty. This will enable an initial investigation to be commenced prior to the full interviewing of those involved."

MENTALLY DISORDERED PERSONS

206. The standard operating procedures for 'Mentally Disordered Persons' instruct communicators to find out whether the person is a committed patient, and if so, whether they are considered a risk to themselves or others. The communicator must also ask where the patient may be heading to or where they can be found, and request written notification of the patient's absence by fax.

207. The communicator should then gather key information about the "mentally disturbed" person, including:

- actions or behaviour causing concern;
- details of any weapons;
- reason why the caller believes the person is mentally disturbed;
- current location (public place or private property);
- whether intoxication by drugs and/or alcohol be discounted;
- whether the person is placing him or herself in danger/likely to commit an offence/ suicidal/jeopardising public safety; and
- whether the person is alone.

208. Communicators are instructed to immediately enter the event as Priority 1 or Priority 2, as appropriate.
209. The standard operating procedures state that, when the person is a committed patient, the dispatcher must request that a Duly Authorised Officer (DAO) attend the scene with Police *“where it is believed the patient can be found, where the patient poses a risk”*. However Police may have to act regardless of whether a DAO is available.
210. For incidents involving mentally disordered persons:
- a Police unit should be dispatched to attend the incident *“where warranted by behaviour to take the person to his or her residence ([or] to the care of a responsible person)”*;
 - if requested, the dispatcher should call out a Duly Authorised Officer;
 - two officers are to attend the incident and, for safety reasons, the dispatcher should maintain communication with the responding officers;
 - a *“QP”* (Police database check) is to be *“done as a matter of course and history is to be passed to the attending personnel”*; and
 - if Police are not required to attend, the dispatcher should *“inform and dispatch in accord with District Mobilisation Procedures”*.

About the Authority

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.

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

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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



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