

Non-fatal Police shooting of Wattie Kahu in Whanganui

INTRODUCTION

1. At about 8.50am on Thursday 24 March 2016, a Police officer shot Wattie Kahu twice after he presented an imitation pistol at Police on Plymouth Street, Whanganui. Mr Kahu survived the shooting but received injuries to his leg and head.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.
3. The Authority concluded its investigation in March 2017, but delayed the release of its public report until after the conclusion of related court proceedings in May 2017.

BACKGROUND

Planned operation to arrest Wattie Kahu

4. Wattie Kahu has a long history of violent criminal offending, including using a firearm against Police and threatening to kill.
5. In the early hours of Sunday 20 March 2016, a burglary was committed at an address in Cooks Street, Whanganui. Later that morning Police pursued a car occupied by Mr Kahu and another man, who were suspected of carrying out another burglary at the Angora Café and Restaurant on Victoria Avenue.
6. Mr Kahu crashed the car and both occupants fled the scene. Mr Kahu escaped but the second man, who was injured in the crash, later handed himself in to Police. Inside the crashed vehicle Police found an imitation pistol and stolen property from the Cooks Street address.
7. Officer A was assigned to investigate the Cooks Street burglary on 21 March 2016. He conducted enquiries and determined that he needed to locate and arrest Mr Kahu.

8. On 22 March 2016, Police received information that Mr Kahu was using methamphetamine and had access to firearms which he was prepared to use against Police. The Central Police District Command Centre (DCC) then created a front line intelligence (FLINT) report on Mr Kahu and provided it to all Whanganui Police staff. This report outlined the risk Mr Kahu posed to Police and explained why he was currently wanted for arrest.
9. Police tried calling Mr Kahu to arrange an interview with him about the burglary, but were unable to make contact. Other attempts to locate Mr Kahu were also unsuccessful.
10. During his enquiries, Officer A discovered that Mr Kahu was expected to attend an appointment at 8am on Thursday 24 March 2016.
11. On 23 March 2016 Officer A consulted AOS Officer B, a senior officer in the Whanganui Armed Offenders Squad (AOS), about the option of apprehending Mr Kahu when (and if) he showed up for that appointment.
12. AOS Officer B began planning how to carry out the arrest and completed a comprehensive risk assessment, including consideration of how to minimise the risks to members of the public, Corrections staff and Police. The aim was to arrest Mr Kahu as quickly and safely as possible. To assist their planning Officer A and AOS Officer B visited the location where the arrest was to take place.
13. AOS Officer B decided to use five AOS officers, including himself and a dog handler, as the primary arrest group. The AOS officers were to be in 'blue role' (in blue Police uniform with AOS equipment rather than in their usual black overalls). AOS Officer B was in charge of this operation and his arrest plan was approved by an AOS inspector.
14. The agency where Mr Kahu's appointment was to take place was advised of the plan to arrest Mr Kahu but no one advised the Police Southern Communications Centre (SouthComms), which oversees the area of Whanganui. Nor was the District Command Centre informed.
15. At 7.30am on Thursday 24 March 2016, Officer A and AOS Officer B briefed the officers involved in the operation at the Whanganui Police Station. AOS Officers C, D, E, and F and Officer G from the Intelligence section attended the briefing.
16. Officer A and AOS Officer B outlined Mr Kahu's criminal history, including that he had previously presented a shotgun at Police. AOS Officer B then explained the arrest plan, discussed tactics and assigned roles to each officer.
17. All the officers were equipped with stab-resistant body armour (SRBA), and with hard armour plating (HAP).¹ In addition to Glock pistols, the arrest group had access to a range of tactical options including OC spray, Baton, Taser, Police dog and 40mm sponge rounds. AOS Officer D

¹ Police policy requires officers to wear ballistic body armour (in this case, HAP over SRBA) when deploying to an incident where Police believe firearms are present or could be present.

also carried a Colt M4 rifle. During the briefing AOS Officer B reminded the officers of the Police's fire orders, as required when carrying firearms.²

18. At about 7.40am the seven officers began travelling towards the planned arrest location in three groups.
19. About this time Officer A called SouthComms and requested that the dispatcher for the Whanganui radio channel call him back. The dispatcher called while Officer A was driving, so Officer A passed the phone to Officer G to answer the call.
20. Officer G advised the dispatcher that they were going to try to locate somebody, and started listing the Police units involved. The dispatcher enquired where they going, and entered those details into an 'Enquiry' event he created within the Police's Computer Aided Dispatch (CAD) system before asking Officer G to continue identifying the officers attending. Officer G mentioned that "*a couple of the AOS boys*" were assisting but could not remember all of their call signs.
21. Officer G never told the dispatcher the name of the offender they were going to locate, and the dispatcher did not ask for any more details before ending the call. The dispatcher was unaware that the officers were trying to apprehend Mr Kahu and that they were carrying firearms; therefore he did not alert the SouthComms shift commander about the event.
22. When interviewed by the Authority, Officer G could not recall speaking to the dispatcher that day. He said he had never briefed Comms about an AOS operation before and he would not normally be required to do so. Officer A also had little recollection of the phone call but said its purpose was just to inform SouthComms of what they were doing and where. He also remarked that he would expect the dispatcher to ask for more information if necessary. However the dispatcher stated that his job keeps him very busy and he expects officers to provide him with all relevant information.
23. By 7.50am the officers involved in the planned operation had arrived at the Community Probation Service and taken up their positions to await Mr Kahu's arrival.

Reports of suspicious activity

24. At 7.54am a member of the public called 111 to report suspicious activity at a Plymouth Street address, about 1.5 kilometres from the planned arrest location. The caller had seen a man running around behind the property about five minutes earlier.
25. The Police communicator created a Priority 2 'Suspicious Person' event in the CAD system,³ and recorded a description of the suspect: a Māori male in his 20s, five feet and seven inches tall, and wearing a brown outfit with no shoes. The Whanganui dispatcher broadcast the

² Fire orders instruct officers to always be aware of their personal responsibilities in the use of firearms. The fire orders remind officers of relevant sections of the Crimes Act 1961 and set out the circumstances in which the use of lethal force is justified. See paragraphs 83-86 for policy.

³ Police must endeavour to attend 'Priority 2' events within 30 minutes.

information about this incident over the Police radio and three Public Safety Team (PST) officers said they would go to the address.

26. At 7.58am another member of the public called 111 to report an unknown man in the backyard of a property in Bell Street, a short distance from the Plymouth Street incident. The Police communicator created a Priority 1 'Burglary' event including a description of the man: a slim-build Māori male with a bald head, in his 40s, wearing a khaki vest and jeans. The Whanganui dispatcher alerted the PST officers to the new incident and they arrived at the Bell Street address within two minutes.
27. Officer H, a sergeant, was the early shift supervisor of the PST on duty that morning. He is an AOS member and former Police dog handler with a large amount of experience in setting cordons to contain and apprehend offenders.
28. Upon hearing that the man appeared to have climbed over the back fence into another property, Officer H decided to attend this incident and drove to Bell Street from the Whanganui Police Station. On the way he began directing his officers to cordon points around the Bell Street address. He took up a position at the intersection of Bell Street and Plymouth Street and continued assigning the attending officers to cordon points.
29. Meanwhile Officer A and AOS Officer B heard about the Bell Street incident over the radio, and considered that the description of the offender generally matched Mr Kahu. Mr Kahu had not shown up for his 8am appointment.
30. At about 8.08am, Officer A notified Officer H over the radio that the offender he was dealing with may be the co-offender of someone recently arrested on Plymouth Street. In a Police statement Officer A said: *"I didn't want to name [Mr Kahu] over the radio, but [Officer H] was aware of what I was talking about and acknowledged he knew the people involved."* Officer A did not want to name Mr Kahu because he knew that the Police radio channel was unencrypted and that Mr Kahu's associates may be listening.
31. Officer H was aware of the planned operation to arrest Mr Kahu, but neither he nor his front line officers had been included in the briefing that morning. However the officers were aware of Mr Kahu from the FLINT report which had been distributed (see paragraph 8).
32. Officer H knew that Mr Kahu was currently wanted for arrest, and that he was flagged in the Police database for using firearms. He contacted his officers over the radio to confirm that they knew who they were talking about (without naming Mr Kahu), and asked that they *"grab the appropriate"* tactical options – meaning that they should arm themselves with firearms due to the risk Mr Kahu posed. Officer H told the Authority that he did not mention the Police's fire orders over the radio, but expected the officers to be aware of their obligation to remind themselves of the fire orders when carrying firearms.
33. AOS Officer B called AOS Officer F on his cell phone and arranged for him and AOS Officer E to be re-deployed to the Bell Street incident, so that AOS Officer E could track the offender with his Police dog. AOS Officer F was to act as AOS Officer E's armed 'cover man'. The other

officers (Officers A and G, and AOS Officers B, C and D) remained on site in case Mr Kahu showed up for his appointment and the planned operation could take place.

34. Because the officers did not name Mr Kahu when discussing him over the radio, the Whanganui dispatcher remained unaware that he may be the offender the officers were trying to apprehend at Bell Street, and did not realise that the officers attending that incident were arming themselves with firearms due to that risk. Consequently the dispatcher did not alert the SouthComms shift commander or the DCC.
35. However, at this stage it was not confirmed that Mr Kahu was involved in the Bell Street incident. The description of the suspect was quite broad and there had not been any information to suggest the offender had a firearm.
36. AOS Officers E and F soon arrived at the Bell Street property and Officer H directed them to begin tracking from that address. More officers became available to assist and Officer H added them to the cordons. At about 8.16am a member of the public approached Officer H, and he adjusted the cordon points after she advised him she had just seen a man lying on the ground within her property on Keith Street.⁴
37. About this time, after Mr Kahu had failed to arrive at his appointment, AOS Officer B decided to stand down the officers still involved with the planned operation. He sent these officers to assist with maintaining cordons to apprehend the suspected burglar or burglars. They continued to carry their AOS equipment, including firearms, but were only attending the incident to assist the PST officers – not because anyone considered it necessary to deploy the AOS in the circumstances.
38. AOS Officer B travelled to Plymouth Street and consulted with Officer H. AOS Officer B told the Authority that, although he was the higher-ranking officer, he did not consider it necessary to assume control of the incident from Officer H because he had confidence in Officer H's abilities.
39. Officer H used the AOS officers to strengthen the cordons, placing them in the higher-risk positions because they had more tactical options available and were better equipped than the PST officers.
40. At about 8.24am, AOS Officer E found an offender (Mr Y) at an address on Keith Street, within the cordons. AOS Officer F then arrested Mr Y because he was wanted by Police.⁵
41. Neighbours advised Police that they had seen a second man jumping fences, so Officer H ordered officers to maintain the cordons. Officer H broadcast a description of this second offender which was consistent with the one initially given in response to the Bell Street incident (and generally matched Mr Kahu's description). The offender was believed to be within the residential blocks bordered by Keith Street, Dublin Street, Pitt Street and Plymouth Street.

⁴ Keith Street is two blocks away from Bell Street.

⁵ Mr Y is not believed to be linked to Mr Kahu.

42. Since AOS Officer F was busy dealing with Mr Y, AOS Officer D became the 'cover man' for AOS Officer E as he began to track the second offender with his Police dog. AOS Officer D gave Officer H his M4 rifle because it was not practical for him to carry it while following the dog through backyards and over fences.
43. Officer H stood on Keith Street, and continued to adjust the cordons based on updates from AOS Officer E about where the dog was tracking, and from neighbours who had seen a man running through their properties and jumping fences. AOS Officer E advised that the offender appeared to be heading back towards Plymouth Street.
44. AOS Officer D was in the driveway of a property on Niblett Street when he saw a man matching the description of the offender run out the back of the house. He yelled "Stop, armed Police". The man responded "Shoot me then" before jumping a fence into the backyard of a Plymouth Street property.
45. AOS Officer E was called to investigate this area, and reported that he had found an open door at the neighbouring house on Plymouth Street. When he requested help with searching the property several officers came to assist, including Officer A. AOS Officers B and C also drove to Plymouth Street and took up positions in the cordon nearby.
46. AOS Officer B climbed onto a Telecom box outside another property on Plymouth Street, to get a better view of the neighbouring yards. After leaving his car, AOS Officer B could no longer hear or use the Whanganui radio channel because his portable radio was encrypted for AOS purposes. However he remained near other officers who could pass on information to him from the Whanganui channel.
47. Meanwhile an occupant of Keith Street approached Officer H and informed him that he had seen a bald male Māori in a neighbouring property. He said the man had put his finger to his lips, signalling him to stay quiet, before moving out of sight. Officer H asked the occupant to show him where he had seen the man, and he pointed Officer H towards the backyard of the Plymouth Street property where AOS Officer D had seen a man jump over the fence (see paragraph 44). Officer H reported this sighting to AOS Officer E.
48. At about the same time, as AOS Officer C was walking past the Plymouth Street property with the Telecom box outside, a woman came out of the house and told him a bald man was in her back garden. He passed this information on to AOS Officer E, and went up the driveway of the neighbouring Plymouth Street address to tighten the cordon. He was joined by two detectives who were assisting in the search for the offender, and could hear many other officers in the area.
49. AOS Officer E believed they had confined the offender to a small area, and asked the officers to hold their cordons so he could methodically search each property with his Police dog.

The shooting

50. From his position in the backyard of the neighbouring Plymouth Street property, AOS Officer C saw movement at the back of the address where the man had earlier been sighted by AOS Officer D and the Keith Street occupant. In his Police statement AOS Officer C said: *“I couldn't see what was happening, but it sounded like someone was clambering in or out of the window.”* Soon afterwards he saw a woman reach out and slam the window shut.⁶

51. Officer H was in the backyard of the Keith Street property situated directly behind this Plymouth Street address, when he heard a noise to his left and then saw a Māori man stand up on the fence at the back corner of the Plymouth Street property, about five to six metres away. Officer H said:

“This male was facing me and I immediately saw that he was pointing a black pistol at me as he was leaning over the top of the fence. He didn't say anything to me, just pointed that pistol at me. My immediate thought was that he was about to shoot me.”

52. Officer H was still holding the M4 rifle AOS Officer D had given him earlier. He raised the rifle towards the man on the fence, flicked the safety switch off and put his finger on the trigger, but the man quickly dropped down out of sight. Officer H immediately radioed, at 8.51am: *“Male has a firearm, male has a pistol”*. This was the first time Police became aware that the offender they were seeking had a firearm.

53. AOS Officer B was still standing on the Telecom box on Plymouth Street at this time. Since he did not have a radio, a nearby officer signalled to him that the offender had a gun. AOS Officer B heard yelling, so he jumped down from the Telecom box and began moving down Plymouth Street towards the driveway of the property where AOS Officer C was located.

54. Meanwhile AOS Officer C saw a Māori man with a bald head jump over a fence in front of him and land on the ground on all fours, about five metres away. He immediately recognised the man as Mr Kahu.

55. AOS Officer C said:

“I didn't see anything in his hands as he was coming over the fence, but as he was coming over the fence I challenged him. I don't remember what I yelled at him but it would have been something along the lines of ‘stay on the ground’ or ‘don't move’.

I had started to draw my Glock pistol as he was coming over the fence. I did this after I had identified it was [Mr Kahu] as I knew there was information he was in possession of a pistol, but I reassessed my surroundings and the situation in front of me and I decided it was not my best tactical option in the situation so I started to transition to my Taser instead of my firearm as it was the next best tactical option I had.”

⁶ Mr Kahu had entered the house and threatened the occupants before leaving through the window.

56. AOS Officer C explained that he switched from his Glock pistol to his Taser because he was concerned that other officers would be in the line of fire if he had to use the pistol. He had not seen a firearm on Mr Kahu at that point and had not heard Officer H's message on the radio.
57. Immediately after jumping the fence, Mr Kahu ran forward from where he landed on the grass. AOS Officer C saw something black in Mr Kahu's hands, and realised it was a gun. AOS Officer C thought the gun looked like a black pistol that was real. He started yelling "Gun, gun, gun" to warn other people in the area about the weapon. Mr Kahu was actually carrying an imitation pistol, but officers were unaware of this at the time.
58. Mr Kahu ran towards the driveway of the property, and pointed his pistol at AOS Officer C as he ran past him. AOS Officer C began drawing his Taser as Mr Kahu got to within two metres of him, but before he could use the Taser Mr Kahu had run around the corner of the house and down the driveway, heading for Plymouth Street. AOS Officer C followed him with the Taser still drawn.
59. Mr Kahu reached the end of the driveway and ran into the middle of Plymouth Street, then turned back towards AOS Officer C and pointed the gun at him.⁷ AOS Officer B, who was standing on the footpath nearby, saw this and drew his Glock pistol. AOS Officer C fired his Taser, but it did not connect with Mr Kahu.
60. Simultaneously, AOS Officer B fired two shots from his Glock pistol. In his Police statement AOS Officer B said:

"The pistol was being aimed directly towards [AOS Officer C] who was about 2-3 metres from the male [Mr Kahu]. I believed the male was about to fire his pistol at [AOS Officer C] and feared that death or GBH [grievous bodily harm] would result.

... I brought [my] Glock up into my line of sight with my right hand and engaged my left hand on the weapon. As soon as I acquired a sight picture of the male's torso I 'doubled tapped' two rounds at him. By this I mean that I fired 2 rounds in quick succession without re-establishing sight picture between shots.

They were "instinctive" shots as opposed to precisely aimed shots I would have been approximately 10 - 12 metres from him when I fired.

61. AOS Officer B stated that he did not call upon Mr Kahu to surrender because he believed AOS Officer C was "in imminent danger" of being shot. He commented that: "It was clear to me that [Mr Kahu] could not be disarmed or arrested without being shot", and in the circumstances he believed he could not delay taking action to apprehend Mr Kahu.
62. Mr Kahu was struck by both bullets and fell to the ground in the middle of the street. Officer H radioed: "Shots fired, shots fired." This transmission happened about 22 seconds after Officer H broadcast that the offender had a firearm (see paragraph 52).

⁷ During its investigation, the Authority viewed CCTV footage of the shooting and its aftermath.

63. AOS Officers B and C approached Mr Kahu and pointed their weapons at him while they assessed whether he still posed a threat. Other officers in the vicinity heard the shots and soon joined them. AOS Officer B said Mr Kahu was still *“conscious and communicative”*.
64. Officer A saw Mr Kahu’s pistol lying on the ground near him, so he slid it away with his foot. He noticed that the pistol was too light to be a functional firearm, and determined that it was probably a BB gun or imitation firearm.
65. Police requested an ambulance to attend the scene and the officers quickly searched and handcuffed Mr Kahu.
66. Officer H called AOS Officer D, an AOS medic, to help the other officers administering first aid to Mr Kahu. Mr Kahu suffered a wound to his upper leg and a graze on his head, but the injuries were not life-threatening and he was soon stabilised.
67. The ambulance arrived and took Mr Kahu to hospital, but he refused treatment. Police then transported Mr Kahu back to the Whanganui Police Station, where he was charged with various offences and detained in custody.
68. The officers involved in the incident were all up-to-date with their first aid and weapons/tactical training. Following the shooting, the officers underwent breath-alcohol and firearms residue testing and were offered support under the Police’s Trauma policy. On 14 July 2016 Police carried out a formal debrief.
69. Mr Kahu pleaded guilty to charges of aggravated burglary, kidnapping, burglary, recklessly causing injury and two charges of using an imitation firearm to prevent arrest. On 15 May 2017 in the Whanganui High Court he was sentenced to a total of seven years’ imprisonment.

Police investigation

70. Police carried out a criminal investigation into the use of force against Mr Kahu and determined that the officers’ actions were justified.
71. Police also conducted a review of their handling of this incident, and found that the Whanganui PST staff, the DCC and SouthComms should have received a briefing regarding the planned operation to arrest Mr Kahu on the morning of 24 March 2016. The review stated:

“The local staff that were working in the immediate area were not included in the briefing for the planned apprehension operation which potentially put them at unnecessary risk while performing their general duties in that same area.”
72. The review noted that the Police debrief was held 112 days after event, but Police policy requires that *“Debriefs should be conducted as soon as possible after every Police-involved incident, event or operation”*.
73. Police advised that they have taken action within Central District to reinforce best practice regarding timely:

- communication to Communications Centres and DCCs about planned operational deployments;
- *“briefing of all operational staff on duty at the time of the planned operational activities”*; and
- *“debriefing as soon as possible after an operation”*.

LAWS AND POLICIES

Use of force

Law on the use of force

74. 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.”*
75. 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.”*
76. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on the use of force

77. 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.
78. 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.
79. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and

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

80. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
81. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Firearms

Authorisation to carry firearms

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

Use of firearms

83. 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 82 and in accordance with the Crimes Act provisions referred to in paragraphs 74-76.
84. 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.*"
85. 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; and
 - further delay in apprehending the offender would be dangerous or impractical.

86. 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 their supervisor and the communications centre that they are armed *“unless this is impractical in the particular situation”*. When it is impractical to notify them immediately, officers must *“advise the appropriate person at the first reasonable opportunity”*.
- 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.

THE AUTHORITY'S FINDINGS

Issue 1: Were Police justified in arming themselves in response to this incident?

87. Police may carry firearms when they perceive that a situation involves, or is likely to escalate to involve, a risk of death or grievous bodily harm.
88. The Authority finds that the officers taking part in the planned operation to arrest Mr Kahu on the morning of 24 March 2016 were justified in arming themselves due to the identified risks associated with Mr Kahu. These risks included his violent criminal history and the information indicating that he had access to firearms which he was prepared to use against Police. The officers complied with Police policy by wearing ballistic body armour and reminding themselves of the Police fire orders.
89. The PST officers attending the Bell Street burglary incident were also justified in arming themselves when they received information that the suspect they were seeking may be Mr Kahu. The officers had recently received a FLINT report on Mr Kahu and were aware of the danger he posed.

FINDING

Police were justified in arming themselves in response to this incident.

Issue 2: Did Police respond appropriately during this incident in terms of communications, command and control, and the use of appropriate tactical options?

90. The Authority considers that the planned operation to arrest Mr Kahu with the assistance of AOS officers was appropriate in light of the risk posed by Mr Kahu and the need to apprehend him quickly. Officer A and AOS Officer B undertook comprehensive planning and risk assessment for the operation, but did not provide SouthComms or the DCC with this information.
91. Officer A did take steps to notify SouthComms on the morning of the operation, but the information provided was inadequate (see paragraphs 19-22). SouthComms remained unaware that the officers were seeking to arrest Mr Kahu, who had been sought by Police for several days and was thought to be in possession of a real pistol. Police policy also requires officers to notify the communications centre when they are carrying firearms, but that did not happen in this case.
92. In the Authority's view, SouthComms and the DCC should have been more fully briefed about the planned AOS operation so that they were aware of what was happening in the area under their control. If the planned operation to arrest Mr Kahu had encountered problems, then SouthComms would have been on the back foot because they did not already know who the officers were trying to apprehend, what the risks were and who exactly was at the scene.

93. When the incident at Bell Street arose, Officer H assumed control of the Police response. Officer A advised Officer H over the radio of the risk that Mr Kahu may be involved but did not mention him by name. Officer H then instructed his officers to “*grab the appropriate*” – meaning that they should carry firearms.
94. The officers were talking in coded language because the Whanganui Police radio channel is unencrypted, and they were wary that associates of Mr Kahu may be listening. This resulted in the SouthComms dispatcher not realising that Mr Kahu was a possible suspect and that officers were carrying firearms; therefore the dispatcher did not alert the SouthComms shift commander to the potential risks. If SouthComms had been aware that the officers may be dealing with an armed offender, they could have provided additional oversight of Police actions.
95. However, the Authority accepts that the failure to properly inform SouthComms about Mr Kahu’s potential involvement and the carriage of firearms did not materially affect the outcome of this incident.
96. Even if the dispatcher and shift commander had been aware of Mr Kahu’s potential involvement in the suspicious activity at Bell Street, it is likely that Officer H would have remained in control of the Police response as he is a highly experienced, AOS-trained local officer and was in the best position to manage the incident. All officers interviewed by the Authority considered that Officer H performed his command role very well, and that his level of experience and local knowledge equipped him to handle an incident of this nature.
97. After the planned operation to arrest Mr Kahu was abandoned, Officer H was able to utilise the AOS officers and other officers who offered to assist with the cordons. The officers involved had access to a wide range of tactical options, including a Police dog and Tasers, in addition to firearms. The Police strategy of cordoning, containing and tracking the offenders was ultimately successful.

FINDINGS

Police responded appropriately to the developing situation on Plymouth Street, and generally complied with policy and good practice regarding command and control. Officer H managed the incident well.

However SouthComms should have been notified of the planned operation to arrest Mr Kahu and that officers attending the Bell Street incident were carrying firearms.

Issue 3: Were Police justified in using a Taser and shooting Mr Kahu?

98. Law and Police policy state that Police officers may use reasonable force in the execution of their duties, and that they are criminally responsible for any excessive use of force. Section 48 of the Crimes Act 1961 also provides that everyone is justified in using force which, in the circumstances as they believe them to be, it is reasonable to use in defence of themselves or in defence of another person.
99. When confronted by Mr Kahu, AOS Officer C started to draw his pistol but decided to draw his Taser instead, because he was concerned that other people may be in the line of fire. At this point, AOS Officer C had not seen a firearm on Mr Kahu and had not heard Officer H's radio message: *"Male has a firearm...."*
100. After seeing that Mr Kahu appeared to be carrying a pistol, AOS Officer C presented the Taser at Mr Kahu and then chased Mr Kahu down a driveway towards Plymouth Street with the Taser drawn. When Mr Kahu reached the middle of the street, he turned back towards AOS Officer C and pointed his gun at him. AOS Officer C fired his Taser but it did not connect with Mr Kahu and therefore had no effect.
101. Given the risk Mr Kahu posed, the Authority considers that AOS Officer C was justified in using the Taser in defence of himself and in an attempt to apprehend Mr Kahu.
102. At the same time as AOS Officer C fired the Taser at Mr Kahu, AOS Officer B discharged two shots from his Glock pistol. At the time of the shooting, AOS Officer B was aware that:
- Mr Kahu had a long and violent criminal history, including violence against Police;
 - Police had received information that Mr Kahu had access to firearms which he was prepared to use against Police;
 - Mr Kahu was attempting to evade capture and was pointing a pistol towards AOS Officer C;
 - Mr Kahu posed a threat of grievous bodily harm or death to AOS Officer C; and
 - other people were also at risk from Mr Kahu, given the public location of this incident.
103. AOS Officer B considered that Mr Kahu had the capability and opportunity to shoot AOS Officer C, and that it was necessary to act immediately to prevent that from happening. There was no time to call upon Mr Kahu to surrender before shooting him because delay was impractical and dangerous.

104. The Authority finds that AOS Officer B was justified in acting in defence of AOS Officer C by shooting Mr Kahu. Mr Kahu posed an immediate threat of grievous bodily harm or death, and it was reasonable for AOS Officer B to use his firearm in the circumstances.

FINDINGS

AOS Officer C was justified in presenting and firing a Taser at Mr Kahu.

AOS Officer B was justified in shooting Mr Kahu.

Issue 4: Did Police provide Mr Kahu with appropriate aftercare?

105. After the shooting, Police quickly called an ambulance and provided first aid to Mr Kahu. Mr Kahu's injuries were not life-threatening and he refused treatment at hospital.

FINDING

Police provided Mr Kahu with appropriate aftercare after he was shot.

SUBSEQUENT ACTIONS

106. On 4 August 2016, in its report on a *"Serious crash following a Police pursuit on Yaldhurst Road, Christchurch"*, the Authority recommended that the New Zealand Police develop policy requiring the Armed Offenders Squad to notify the Police Communications Centre and the relevant District Command Centre of all deployments.
107. Police have subsequently advised the Authority that they have accepted and implemented this recommendation.

CONCLUSIONS

108. AOS Officer B was justified under section 48 of the Crimes Act 1961 in shooting Mr Kahu. At the time he fired, AOS Officer B feared that Mr Kahu would shoot AOS Officer C.
109. The Authority has also determined that:
- 1) AOS Officer C was justified in presenting and firing a Taser at Mr Kahu.
 - 2) Police were justified in arming themselves in response to this incident.
 - 3) Police responded appropriately to the developing situation on Plymouth Street, and generally complied with policy and good practice regarding command and control. Officer H managed the incident well.
 - 4) However SouthComms should have been notified of the planned operation to arrest Mr Kahu and that officers attending the Bell Street incident were carrying firearms.
 - 5) Police provided Mr Kahu with appropriate aftercare after he was shot.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

13 July 2017

IPCA: 15-1788

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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