

The Police shooting of Ford Hurinui in Motueka

INTRODUCTION

1. At 4.03pm on Thursday 20 August 2015, a Police officer shot and wounded Ford Hurinui, following a pursuit in Motueka. Mr Hurinui survived, but the bullet caused damage to his heart and liver.
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.

BACKGROUND

Events leading up to the shooting

3. On 4 August 2015, a parole recall warrant¹ was issued for Mr Hurinui after he breached a protection order. Mr Hurinui's probation officer advised him about the recall warrant, and during the week leading up to the shooting, Mr Hurinui was aware that Police were actively searching for him.
4. Officer A was assigned to look for Mr Hurinui. At approximately 3.15pm on 20 August 2015, Officer A received a phone call from his supervisor stating that Mr Hurinui had been seen two hours earlier at a Motueka service station. He was in a white Mitsubishi Galant (the Mitsubishi) with his friend, Mr U, and an unknown third person. After the phone call, Officer A decided to drive around some local addresses that he knew Mr Hurinui visited often.
5. Officers B, C, D and E were also advised that Mr Hurinui had been seen in Motueka and they were provided with a description and the registration number of the Mitsubishi.
6. Officer B told the Authority that he was aware the Mitsubishi had links to a gang member who was known to carry firearms. He was also concerned about what lengths Mr Hurinui would go to avoid going back to prison. As a result, Officer B armed himself with a Glock pistol and

¹ A parole recall warrant authorises Police to arrest a person and return them to prison.

considered the Police General Instruction F061 (fire orders) as required by Police policy (refer to paragraphs 140-144).

7. The first location Officer A went to was an address on Staples Street where an associate of Mr Hurinui lived. As Officer A drove past the property, he saw the Mitsubishi in the driveway with its reverse lights on. Officer A, who was driving a marked Police car, continued past the address and pulled into a driveway further up the road. However, Officer A was unable to see the address from where he had parked due to the dense trees lining the road.
8. Officer B, who was approaching the intersection of Thorp Street and Staples Street, heard Officer A transmit over the radio that he had found the Mitsubishi on Staples Street. As Officer B turned into Staples Street, he saw Officer A and stopped his car alongside him.
9. Officer A told Officer B to go to the intersection of High Street and Staples Street, so that both ends of the road were covered. Officer A then called another Police officer, who was at the Motueka Police station, and asked him to drive past the address in his personal truck and confirm that the Mitsubishi was still at the address.
10. A short time later, Officer A received confirmation that the Mitsubishi was still in the driveway. A few minutes later, Officer A saw the Mitsubishi leave the address and drive towards High Street.
11. Mr Hurinui advised the Authority that on the afternoon of 20 August 2015, he was walking along Staples Street in Motueka when Mr U, a friend and member of the Head Hunters gang, drove past him and asked if he would like a ride. When he got into the car, Mr Hurinui noticed an off duty Police officer drive past them. However, he did not think much of it at the time.
12. Mr Hurinui said that within minutes of the off duty Police officer driving past, a marked Police car began following them with its lights and sirens on. Mr Hurinui said he told Mr U: *"all I've got is a breach of protection order so you're better off just pulling over."* However, Mr U replied that he was not going to stop, because Police wanted to arrest him and he did not want to go back to prison.
13. Officer A suspected that Mr Hurinui was in the Mitsubishi and he believed that he was justified in trying to stop the car so that he could arrest him. Officer A said he was about 100 metres behind the Mitsubishi when it became clear that the car was accelerating away from him. As the Mitsubishi started to turn left into High Street, Officer A activated his Police car's red and blue lights to signal the driver to stop. At the same time, Officer B, who was waiting at the High Street intersection, activated his lights and siren and pulled in directly behind the Mitsubishi.
14. At 3.37pm, Officer A radioed the Police Southern Communications Centre (SouthComms) that he was in pursuit for *"failing to stop"*, and broadcast the registration number of the Mitsubishi and direction of travel as required by Police policy. Officer A also advised SouthComms that Officer B was the lead pursuing vehicle, that Mr Hurinui was a passenger in the car, and that he was a high-risk family violence offender.

15. Officers C, D and E, and F and G, all heard Officer A's radio transmission that he was in pursuit. These officers began driving towards the scene from their various locations in Motueka, Richmond (36km away), and Nelson (40km away). Officers H and I also heard Officer A's radio transmission. However, because they were driving to the Stoke Police station at the time, they decided to wait and monitor the pursuit over the radio instead of going to assist Officers A and B.
16. As the Mitsubishi turned left into Fearon Street, the SouthComms dispatcher told the pursuing officers: *"if there's any unjustified risk to any persons you are to abandon pursuit immediately, acknowledge."*² Officer A acknowledged the pursuit warning and continued to advise SouthComms of the road and traffic conditions.
17. The Mitsubishi continued along Fearon Street, before turning left into Thorp Street and left again into Staples Street. Officer A told the Authority that although the speed of the Mitsubishi was 100kph in a 50kph area he was quite happy with the way the vehicle was being driven and believed the risk of continuing the pursuit was acceptable.
18. Officer A continued to provide SouthComms with regular updates. When the Mitsubishi turned right into Parker Street, he noticed the car had started smoking. He radioed SouthComms and advised them that the *"vehicle is smoking badly"* and that the occupants *"may bail in a sec"*. As the Mitsubishi turned into Atkins Street, Officer A radioed SouthComms that the Mitsubishi seemed to be *"coming to a stop shortly"*.
19. Mr Hurinui said that as they were driving, the Mitsubishi began to *"blow up"*. With the two Police cars close behind them, Mr U asked him for a favour and said *"I don't wanna go back [to prison], I've got heaps to lose ... so if you can just cover for me ... there's a gun in the boot and here's the ammo."* Mr Hurinui said that Mr U tried to give him the ammunition, but he threw it aside and told Mr U, *"I'll grab the gun but I'm not fucking loading it."*
20. The Mitsubishi continued along Atkins Street, through the Poole Street intersection and turned left into Pah Street. Officer J, who was off duty and driving his personal car, was also driving down Pah Street when he noticed the pursuit come up behind him. Officer J said he slowed his car down to 40kph to try to block the Mitsubishi and assist Police.
21. The Mitsubishi, closely followed by the two Police cars, undertook Officer J and then turned left into Wharepapa Grove. As soon as they entered Wharepapa Grove, Officer A radioed SouthComms: *"Wharepapa Grove, they're gonna bail, dead end street, they're gonna bail."* Wharepapa Grove is a dead end residential street, which backs onto a reserve. The reserve provides pedestrian access to Pukeone Place.
22. The Mitsubishi continued for about 70 metres before veering left, up onto the footpath and coming to a stop outside a house, occupied by Mr V, a friend of Mr Hurinui's. The pursuit lasted approximately 4 minutes and covered a distance of 5.1 kilometres.

² The dispatcher advises the Shift Commander when a pursuit has commenced, maintains radio communications with the units involved in the pursuit, obtains situation reports from the pursuing units and communicates instructions from the pursuit controller. The dispatcher is also responsible for communicating the pursuit warning to the lead pursuit unit.

23. Officer B stopped his car alongside the Mitsubishi and Officer A stopped about three or four metres behind. As Officer A pulled up, he saw the Mitsubishi's boot pop open and Mr Hurinui get out of the front passenger seat.
24. Mr Hurinui told the Authority that as soon as Mr U pulled over, Mr U told him to "hurry up" and stall the Police officers so he could get away. Mr Hurinui then quickly got out of the car and grabbed a pump action shotgun from the opened boot. He cocked the gun to check if it was loaded with ammunition. When he found that it was empty, Mr Hurinui turned and faced towards Officer A's Police car with the barrel facing down.
25. Officer A told the Authority that he was initially confused when he saw the boot pop open, but then he saw Mr Hurinui reach into the boot and pull out a shotgun. At 3.41pm, as Mr Hurinui turned towards him, Officer A notified SouthComms: "10/10 he has a shotgun, he has a shotgun, 10/10 he has a shotgun."³
26. Officer A said his first instinct was to put his car into reverse and immediately get out of there. However, he knew that he could not leave Officer B, so he stopped his Police car approximately 15 metres away from the Mitsubishi.
27. At the same time, Officer B, who was parked approximately two metres away from Mr Hurinui, saw that Mr Hurinui was holding a shotgun. Officer B did not think that Officer A had a firearm so his first response was to get out of the car, draw his Glock pistol and, using the rear of his Police car as cover, point his weapon at Mr Hurinui.
28. Officers C, D, E, F and G were still making their way to the scene from their various locations when they heard Officer A's radio transmission that Mr Hurinui had a shotgun. Over the next minute and a half, the officers notified SouthComms that they were en route. As they travelled to the scene these officers, and Officers H and I, pulled over, put on their ballistic body armour, and armed themselves with either a Bushmaster M4 rifle, a Glock pistol or Taser and considered Police fire orders as required by policy (refer to paragraphs 140 to 144).
29. Officer A quickly got out of his car and took a Bushmaster M4 rifle from the gun safe in the boot. He loaded a round into his rifle and, using the open driver's door as cover, pointed his rifle at Mr Hurinui. Officer A said he immediately challenged Mr Hurinui, saying "put the firearm down." From his location, Officer A could see that Officer B was also armed and using his Police car as cover.
30. Officer A told the Authority that as he was arming himself he turned his mind to Police fire orders as required by policy (refer to paragraphs 140 to 144). However, due to the pressure he was under, he did not have enough time to put on his ballistic body armour.
31. When Mr Hurinui turned to face Officer A, he recognised him as being the Police officer who had previously arrested him. Mr Hurinui told the Authority that Officer A had "never liked" him and has "always been a one-sided cop". He explained that he has had issues with Officer A since he was young due to an altercation between his uncle and Officer A. As a result, Mr Hurinui said he

³ 10/10 is a New Zealand Police status code, which means that a Police officer requires immediate assistance.

told Officer A: *“you’re gonna shoot me anyway if I put the gun down or not. You don’t even fucking like me, you’ve always wanted to shoot me.”*

32. In contrast, Officer A told the Authority that there was *“mutual respect”* between the two of them and he *“honestly thought [he] could talk [Mr Hurinui] down.”* Officer A said he continued looking across to Mr Hurinui and repeatedly told him *“Ford, put the fucking firearm down, put it down, put it down, don’t be silly, don’t be silly”*.
33. At the same time Officer J, who had followed the pursuit in his personal car, could see that Mr Hurinui was holding a shotgun in a *“ready position.”*⁴ He said Mr Hurinui was pointing it at both officers as he moved from the boot of the Mitsubishi to the grass strip by the pavement. Officer J could also see Officer A standing by the Police car driver’s door aiming his rifle across the car roof at Mr Hurinui.
34. While this was happening, Officer J said he saw a group of people running towards Mr Hurinui from the Pah Street and Wharepapa Grove intersection. Officer J told the Authority that he drove his car onto the grass verge to block their direction of travel and told them he was a Police officer and they had to move. He then parked his car on the right side of Wharepapa Grove, and ran forward to the boot of Officer A’s Police car. Once there, Officer J looked in the gun safe and put on a ballistic body armour vest.
35. During this time, SouthComms liaised with the response sergeants, who are members of the Police Negotiating Team (PNT)⁵. At 3.44pm, SouthComms paged the Nelson and Blenheim Armed Offenders Squad (AOS). One of the response sergeants also requested that SouthComms organise an ambulance to be on standby. Officer A continued to provide updates to SouthComms by opening his radio channel, which allowed SouthComms and other attending Police officers to hear his conversation with Mr Hurinui.
36. Mr Hurinui told the Authority that, at the time, he was thinking it was *“not a major thing ... it’s an unloaded weapon that I’m not pointing at anybody”*. Although he understood that Police were not aware that the shotgun was not loaded, Mr Hurinui said he believed that, as long as he did not lift it, he would not be giving Police a reason to shoot him. Mr Hurinui said he had planned to stay there for five to ten minutes, to buy some time for Mr U to get away, before putting the gun down.
37. From where Officer J was standing, at the back of Officer A’s Police car, he could hear Officer A telling Mr Hurinui to put the shotgun down. Officer J told the Authority: *“he was sort of encouraging him to do that right thing ... he was giving him good opportunities.”* However, he said Mr Hurinui ignored Officer A and kept *“hyping himself up,”* swinging the shotgun between Officers A and B. Officer J said this swinging action made him think that Mr Hurinui was *“rehearsing”*, as it looked like he was considering whether he would be able to shoot both officers.

⁴ The ‘ready position’ is where the rifle is held level with the upper torso and the muzzle of the gun is angled slightly downwards.

⁵ Members of the Police Negotiation Team are specially trained in psychology and crisis intervention techniques and respond to a range of situations, from threatened suicides to high-risk hostage situations.

38. At around 3.45pm, Officer F arrived at Wharepapa Grove. She could see Mr Hurinui holding a shotgun in both hands looking at Officer A. Officer F told the Authority that she saw Mr Hurinui as an immediate threat and she was worried about her safety, and that of her colleagues. She said that they were all *“at high risk”* and she was concerned from the way that Mr Hurinui was standing that he would shoot someone. Officer F parked her Police car on an angle approximately 10 metres behind Officer A to provide him with some back up.
39. As Officer F got out of her Police car, Officer J approached and asked if he could have a weapon. Officer F, who was armed with a Bushmaster M4 rifle and Glock pistol, gave Officer J her pistol. Officer F then went to the back of her Police car and trained her rifle on Mr Hurinui, while Officer J repositioned himself behind Officer A.
40. As Officer F was arming herself, Mr Hurinui’s sister, Ms X, arrived at Wharepapa Grove. Officer F spoke to Ms X and told her not to go any further. Officer F also asked her what was wrong with her brother. Ms X explained that her brother did not want to go back to prison, and was having domestic issues with his partner and did not know how to deal with it.
41. Mr and Mrs W are a married couple who live on Wharepapa Grove and witnessed the events. When interviewed by the Authority, Mr W said that he could see Mr Hurinui standing with both hands on the shotgun, with the barrel pointing down. He could hear Officer A telling Mr Hurinui *“put the rifle down”* and *“if you raise that shotgun we will have to shoot you.”* Mr W also heard Mr Hurinui reply, *“I’m not going to jail, they’ll kill me.”* Mr W said he heard Mr Hurinui say this several times.
42. Mrs W told the Authority that Officer A spoke to Mr Hurinui with a very *“loud and distinct voice.”* She said Officer A was very clear in telling Mr Hurinui to put the shotgun down, and he did not appear to panic at any time.
43. Officer A said that he could clearly see Mr Hurinui standing at the rear of the Mitsubishi with his hand on the slide of the shotgun and his finger on the trigger. However, although Mr Hurinui had become more agitated, he kept the shotgun pointed down. Officer A said he told Mr Hurinui *“you bring that fucking gun up, I’m going to have to shoot you. You leave me no choice”*. In response to this, Officer A said Mr Hurinui screamed, *“fuck you cunts, I’m not fucking going to jail, I’m not going back to jail.”*
44. At the same time, SouthComms advised all Police at the scene to *“retreat to a safe distance and still appeal ... don’t try to provoke him.”* A response sergeant also asked any available officers at the scene to establish a cordon to keep civilians away.
45. At approximately 3.48pm, SouthComms set up a safe forward point (SFP)⁶ at Parklands School on Pah Street about 450 metres away. Shortly after, SouthComms radioed that Parklands School had an after school function on and as a result, they asked for local knowledge about a more suitable location. As a result, the SFP was moved to the Museum on High Street, about 650 metres from the scene. While this was happening, SouthComms also advised that an ambulance was en route.

⁶ A gathering point for briefings, and the allocation of roles and equipment.

46. While Officer A was speaking to Mr Hurinui, Mr Hurinui's friend, Mr V, came out of his house and approached him. Mr V told Police that he asked Mr Hurinui to hand over the gun, because he had his kids at home and did not want them to be unsafe.
47. Mr V said Mr Hurinui would not listen to him and instead continued to tell Officer A that *"it was all over"* and that Officer A should shoot him. Mr V said:
- "I believe from the bottom of my heart [Mr Hurinui] was trying to get [Officer A] to shoot him because he didn't want to go back to jail He gave me a cuddle and apologised for bringing his shit to my house. I knew then this could be the end, it was the way he looked at me and the cuddle. I knew he was prepared to die."*
48. Mr Hurinui told the Authority that he told Mr V that the gun was not loaded and that he had to stall for Mr U. After his conversation with Mr V he started crying. He said:
- "I realised that I had done a really dumb thing and I was fucked 'cos my friend was crying with his kid in his arms and I was looking down and I said, "What the fuck have I done" and I looked around and there was Police ... and I just thought, "Fuck what am I doing."*
49. Officer A said he heard Mr V repeatedly tell Mr Hurinui to *"put the gun down"*. While they were talking, Officer A saw Mr V attempt to grab the shotgun off Mr Hurinui. Officer A said he was concerned that Mr V was going to be shot so he flicked his rifle safety catch off, and screamed at Mr V to get back inside. Soon after Mr V backed off and disappeared.
50. Shortly after Mr V left, Officer A glanced behind him and saw a local citizen, Mr Y, yelling out to Mr Hurinui to put the gun down. Officer A knew Mr Y had *"mana"* around Motueka so he told Mr Hurinui, *"just put the gun down, listen to [Mr Y]."* Officer A said Mr Hurinui *"amped up over that"* and replied angrily that Mr Y did not know him.
51. At about 3.50pm, Ms X suddenly left where she was standing with Officer F and ran to Mr Hurinui, begging him to put the gun down. Ms X told the Authority that she heard Police telling Mr Hurinui to put the gun down but said her brother ignored her and Police and yelled *"this is how it ends for me"*. Ms X believed that he meant he would die if he went back to prison. She said she knew that he was not going to give up easily, so after a while she walked back to Officer F.
52. When Ms X ran up to her brother she blocked Officer A's sight of Officer B and Mr Hurinui. Officer A immediately radioed Officer B saying *"[Officer B] where are you ... have you got him covered, [Officer B] I haven't got a shot mate I haven't got a shot."*
53. Officer B, who was approximately 15-20 metres away from Officer A, told the Authority that he was unable to respond to Officer A because his radio battery had died, and although he could see Officers A and J, he felt quite isolated because he could not hear what was going on.
54. When Officer A said he did not have a shot, Officer J shifted position and ran directly across the street from Mr Hurinui, where he used a parked car for cover. Officer J said he was approximately 20 metres from Mr Hurinui, and although he knew it would be a long shot, he

believed he was able to cover Officer B from his location. Officer J said he remained in this position for the duration of the event.

55. When Ms X left her brother and ran back to Officer F, Officer A advised SouthComms to get cordons in place at Pukeone Place and Pah Street to stop people approaching Mr Hurinui. Officers H and I, who were in a marked Police car approximately one kilometre away, heard Officer A's radio transmission and volunteered to set up a cordon near the intersection of Wharepapa Grove and Pah Street.
56. At 3.54pm Officer C, a dog handler, arrived at Wharepapa Grove and immediately saw Officers A and F armed with rifles. Looking further up the road, Officer C said he could see Mr Hurinui holding a shotgun, with his left hand underneath the barrel and his right hand around the trigger area.
57. Officer C said he needed to keep Mr Hurinui in his line of sight, so he moved up the left side of Wharepapa Grove and stopped approximately 30 metres away from where Mr Hurinui was standing. Although Officer C felt vulnerable where he was, he believed this position gave him the best tactical advantage if Mr Hurinui ran and he needed to deploy his dog.
58. After assessing the situation, Officer C determined that he was not going to release his dog because Mr Hurinui was not moving and, at that stage, he did not want to force him into doing anything that would harm himself or others. However, Officer C said that if Mr Hurinui had started moving towards the officers, he would not have hesitated to release his dog to defend them.
59. During the final minutes of this incident, Mr and Mrs W and Officers A, C and J all saw Mr Hurinui attempt to load a round into his shotgun. Officer A said he did not see a live shell come out when the shotgun was loaded, so he assumed that Mr Hurinui had forgotten to load the gun earlier and that the weapon was now loaded. From this point on, Officer A said he was confident that the shotgun was loaded.
60. At about 3.55pm, Officers D, E and G arrived. Officer D, who was armed with a Bushmaster M4 rifle and a Glock pistol, went directly to Officer F, leaned over the Police car bonnet and flicked off the safety on his rifle. Officer D said he was approximately 15-20 metres away from Mr Hurinui and he could see that Mr Hurinui appeared to be extremely agitated. He said Mr Hurinui was walking around on the spot with his shotgun pointing downwards and saying "*what are you going to do?*"
61. Officer E, who was also armed with a Bushmaster M4 rifle and Taser, moved forward, up the right side of Wharepapa Grove, and positioned himself behind a white van, approximately five metres from Officer J. From where he was positioned, Officer E could see Mr Hurinui holding a shotgun with his right hand near the trigger area. Although the shotgun was pointing towards the ground, Officer E said he was worried about what Mr Hurinui could do given the way he was holding the shotgun, the proximity between him and the other officers, and the fact that he was being non-compliant.

62. After Officer E got into a firing position, he said he heard Mr Hurinui say to Officer A: *“whatcha gonna do about it?”* Officer E said Mr Hurinui was loud and aggressive and he repeated that question several times.
63. Officer A told the Authority that during the standoff, Mr Hurinui’s demeanour was erratic. He went from being very agitated or angry to calm or emotional.
64. Similarly, Officer F described Mr Hurinui as *“amping himself up”* on and off during the negotiation, getting visibly angry and then calming down repeatedly. Officer F told the Authority, that as more officers arrived, Mr Hurinui was *“getting even more amped up and under pressure”*.
65. During the standoff, Nelson-based AOS staff responded to SouthComms and advised that they were en route. The Tasman District AOS Commander also advised that he was en route, and appointed an AOS Team Leader as Forward Commander until he arrived. As it happened, none of these AOS members arrived until after Mr Hurinui was shot.
66. Shortly after Officer E’s arrival, Officer C saw another dog handler, Officer G, move down the right side of the Wharepapa Grove and get into position, approximately one metre behind Officer A. As Officer G removed the choke chain off his Police dog, he said he looked towards Officer C to establish communication and see whether a two-dog attack was possible.⁷ However, Officer C indicated that he was not in a good position to deploy his dog.
67. When Officer G moved in behind Officer A, Officer A asked him if he was going to deploy his dog. Officer G replied that he was not able to. Officer G told the Authority that he based this decision on the fact that Mr Hurinui would potentially shoot the dog, which could result in the officers returning fire. Officer G considered that although Mr Hurinui was holding a shotgun, at that stage, he was not threatening anyone and he was still being voice appealed to drop the shotgun. Officer G said he believed the best option was to continue to try to talk Mr Hurinui into putting the shotgun down.
68. Mr Hurinui told the Authority that he remembered telling Officer A *“you’re gonna shoot me anyway. If I put this gun down or not, you’re going to shoot me or you’re going to bash me.”* Mr Hurinui said he heard Officer A reply that he wanted to help him, and remembered thinking:

“What the fuck does he mean, help me? They made it look like a really big mess but to me it was like, fuck these guys are making a really big situation out of fuck all, they don’t realise I’m trying to cut off for somebody to get away.”

The shot

69. Mr Hurinui told the Authority that his behaviour remained consistent throughout the standoff. Although he admits *“there could be a slight chance”* that he raised the shotgun, he said he could

⁷ A two-dog attack is designed to cover all eventualities and is primarily used for violent armed offenders. Ideally, the dogs are positioned 180 degrees away from each other, so when the dogs are released, the offender can only target one dog, leaving the second dog free to attack the offender.

not remember that happening and he questioned why he would point the shotgun at the officers when he believed it was not loaded.

70. In contrast, Officer A said Mr Hurinui's demeanour continued to escalate and he appeared to be completely enraged. His behaviour had been fluctuating throughout, but during the last minute of the standoff, Officer A said that Mr Hurinui had "*ramped it up*" and focused solely on him. Officer A said he saw Mr Hurinui spread his legs and plant his feet as though to stabilise himself. This behaviour immediately concerned Officer A because it looked "*like he was getting ready to take the shot*".
71. Officers A, C, D, E, F, G and J and Mr and Mrs W, all described seeing Mr Hurinui begin to lift the shotgun so that the barrel was pointing at Officer A.
72. Mrs W told the Authority that she saw Mr Hurinui was "*crying, shaking, he was very distressed. He just knew that there was nowhere for him to go.*" She said it appeared as though he had "*... just made a decision so he straightened up took a deep breath ... and started raising the rifle ... a very deliberate action*".
73. Mr W said Mr Hurinui began ranting towards Officer A and it looked as though he was "*energising himself*". Mr W told the Authority:

"[Mr Hurinui's] whole demeanour just indicated he'd changed ... I saw definite movement of the gun. He started to raise the gun slowly. He had both hands on the gun. He had a hand on the trigger area in the firing position and he was bringing up the gun by his right side."

74. Officer E said it was clear that Mr Hurinui was moving towards Officer A as he was taking little half steps and was bouncing on his toes. He said he felt extremely vulnerable and believed that Mr Hurinui could take a shot at any stage. He told the Authority that Mr Hurinui had clearly upped the aggression towards Officer A since he had arrived at the scene and he believed that he had no choice but to fire. As a result, Officer E said he aimed his rifle at Mr Hurinui's chest and flicked the safety catch off.
75. Officer A told the Authority that, at this stage, Mr Hurinui was closer to him than at any other time. Officer A said he kept yelling at Mr Hurinui not to come any closer but then he saw him start to lift the gun. At that moment, Officer A said he "*thought he was going to be shot*". At approximately 4.03pm, Officer A fired one shot at Mr Hurinui.
76. Officer E who was in the process of reaching for his trigger, did not fire a shot.

After the shot

77. Immediately after the shot, Mr Hurinui fell to the ground and the shotgun landed beside him. Officer A ran forward and pushed the shotgun to the side to avoid an accidental discharge. He then handed his rifle to Officer C, so that he could start first aid.

78. As Officers A and D began administering first aid to Mr Hurinui, Officer E radioed SouthComms advising that Mr Hurinui had been shot. SouthComms immediately requested an ambulance to go to the scene.
79. At 4.05pm Mr Z, a local paramedic who was at the scene, ran forward and began assisting the officers with first aid. Mr Z said:
- “I estimate from the time the shot was fired to my treatment of the patient was really only a matter of seconds. There was already one Policeman with the patient giving assistance. He was reassuring the man and encouraging him to breathe and saying he would be alright.”*
80. At about 4.06pm, the ambulance arrived at the scene and the paramedics took over administering first aid to Mr Hurinui. At 4.53pm, Mr Hurinui arrived at Nelson Hospital, escorted by Officers D and E.
81. Officers A, B, C, F, G and J were transported separately to a local motel where Officers H and I conducted gunshot residue tests and breath alcohol tests on them. The gunshot residue test confirmed that Officer A was the only officer to have fired his weapon, and all the alcohol results were negative.
82. No members of the AOS had arrived at the scene at the time of the shooting. The Blenheim-based AOS staff were stood down following the shooting, while the Nelson AOS staff assisted with locating Mr U.

Mr Hurinui’s injuries

83. Mr Hurinui received a single bullet wound to his left chest. The bullet caused damage to his heart and liver. Mr Hurinui remained in Intensive Care until 21 September 2015. On 30 September 2015, he was transferred to Rimutaka Prison.

Charges laid against Mr Hurinui

84. Mr Hurinui was convicted on two charges of using a firearm against Police and intent to injure. On 9 June 2017, he was sentenced to five years and 9 months imprisonment.

Officers involved

85. Officers A and B and their Police cars were authorised to engage in pursuits.
86. On 20 August 2015, Officers B, C, E, G and I were current in all training certifications. Officers A, D, H and J were not current in Police Integrated Tactical Training (PITT)⁸, however all these officers were booked in for refresher training at the time of this incident. Officers A, D, H and I were current in all other training certifications.

⁸ As part of their training at the Royal New Zealand Police College (RNZPC), recruits are trained in the appropriate use of approved defensive tactics (including mandatory appointments), TASER and firearms. In districts, the programme (PITT) provides the means for regularly refreshing constables’ knowledge and skill in these areas.

Police investigation

87. The Police conducted a criminal investigation into the shooting of Mr Hurinui. This investigation concluded *“all Police actions were legally justified and that no criminal charges are to be commenced against any of the ten officers involved in the shooting.”*

THE AUTHORITY’S INVESTIGATION

88. As required under section 13 of the Independent Police Conduct Authority Act 1988, on 20 August 2015, Police notified the Authority of the shooting of Mr Hurinui. The Authority immediately commenced an independent investigation.
89. The Authority's investigation considered the following issues:
- 1) Did Police conduct the pursuit in accordance with law and policy?
 - 2) Were Police justified in arming themselves in response to this incident, and were all procedures for arming complied with?
 - 3) Did Police comply with all requirements in respect of communications, and command and control?
 - 4) Were tactical options other than the use of firearms available and considered?
 - 5) Were Police justified in shooting Mr Hurinui?
 - 6) Was all reasonable assistance given to Mr Hurinui after he was shot?

THE AUTHORITY'S FINDINGS

Issue 1: Did Police conduct the pursuit in accordance with law and policy?

90. In the weeks leading up to the shooting, Police were actively searching for Mr Hurinui who had a parole recall warrant issued for his arrest. Earlier on the day of the incident, Mr Hurinui was seen in a Mitsubishi and Officers A and B, both single crew patrols, were actively trying to locate the car and Mr Hurinui.
91. Under section 9 of the Search and Surveillance Act 2012, Police officers are empowered to stop a vehicle if they reasonably believe that the person in the vehicle has committed an offence punishable by imprisonment. Officers A and B located the Mitsubishi outside an address linked to Mr Hurinui. When the officers saw it drive off, they had reasonable grounds to suspect that Mr Hurinui would be in the car and were justified in attempting to stop it in order to arrest him.
92. Because the driver failed to stop and attempted to evade Police, the officers were entitled under the Police fleeing driver policy to commence a pursuit. Officer A informed SouthComms that the car was *"failing to stop"*, and the dispatcher issued the pursuit warning as required by Police policy (refer to paragraphs 123-126).
93. During the four-minute pursuit, Officer B was the primary pursuing vehicle and Officer A provided the radio commentary from the second pursuing vehicle. Officer A advised SouthComms of this formation, and provided the risk assessment details in respect of speed, manner of driving and traffic density.
94. Officers A and B, and their vehicles were authorised to engage in pursuits.
95. The fleeing driver policy requires officers to drive in a manner that prioritises public safety. In this case, both officers kept their Police car's red and blue flashing lights and siren activated at all times.
96. Police are also required to abandon a pursuit if the risk to the safety of the public and Police outweighs the immediate need to apprehend the driver. Officer A was happy with the way the Mitsubishi was being driven and believed the risk of continuing the pursuit was at acceptable levels. When Officer A saw the Mitsubishi begin to smoke, he immediately notified SouthComms. Ninety seconds later, the Mitsubishi turned in the dead end street and slowed down. Officer A advised SouthComms that the passengers were *"going to bail"*.

FINDING

Police complied with law and Police policy during the pursuit.

Issue 2: Were Police justified in arming themselves in response to this incident, and were all procedures for arming complied with?

97. The 'Police Firearms' chapter of the Police Manual sets out the circumstances in which officers may arm themselves (see paragraphs 140-144). In essence, officers may only arm themselves when their assessment of a situation is that it could result in death or grievous bodily harm.
98. On the day of this incident Officer B, who knew the Mitsubishi was linked to a gang member known to carry firearms, armed himself with a pistol and considered the Police General Instruction F061 (fire orders) as required by Police policy.
99. When Mr Hurinui presented a shotgun at Officers A and B, it was clear that the threat of death or grievous bodily harm existed and that the use of firearms might therefore be required, either for the purposes of self-defence or to carry out Mr Hurinui's arrest.
100. When Officer A communicated to SouthComms that Mr Hurinui had a shotgun the thought of death or grievous bodily harm became relevant for the other responding officers. Based on the threat Mr Hurinui presented, all responding officers were justified and authorised to arm themselves in accordance with relevant Police policies.
101. Due to his role as the immediate responder, Officer A did not have time to put on his ballistic body armour. All other responding officers wore ballistic body armour.
102. All officers complied with policy by reminding themselves of the fire orders (see to paragraphs 140-144).

FINDING

All officers attending the incident were justified in arming themselves and complied with relevant Police policies.

Issue 3: Did Police comply with all requirements in respect of communications, and command and control?

103. Command and control 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.
104. The 'Radio Protocols' chapter of the Police Manual sets out Police communication requirements and incident control responsibilities (see paragraph 127). 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.

105. During this incident, the SouthComms Shift Commander assumed the role of incident controller and was responsible for controlling the Police response throughout. In this role, the Shift Commander coordinated a large number of Police units across the district and liaised with AOS, response sergeants and the PNT.
106. Further steps taken by the Shift Commander included ensuring that an ambulance was on standby, an appropriate SFP was established, cordon points were in place and reminding officers to ensure their safety.
107. During the standoff Officer A, the primary negotiator, opened his radio channel allowing SouthComms and other attending Police officers to hear his negotiations with Mr Hurinui. Attending officers were also aware that the AOS Forward Commander and AOS were en route, however they did not arrive until after the shooting.

FINDING

The Shift Commander's communication and command and control of this incident complied with policy and good practice.

Issue 4: Were tactical options other than the use of firearms available and considered?

108. Other than use of firearms, options that can be considered by the Police when dealing with a violent offender include:
- cordon and containment;
 - retreat or delaying an arrest;
 - using road spikes;
 - using CS gas (AOS or STG only);
 - using pepper spray⁹ and/or a baton;
 - using a Taser; and
 - using Police dogs.
109. 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). In this instance, Mr Hurinui surprised Officers A and B when he presented a shotgun at them following the pursuit. Officer A immediately began verbal negotiations with Mr Hurinui, and for 24 minutes spoke with him and requested that he put his weapon down. Other attending officers and members of the public witnessed these negotiations, and some of the dialogue was broadcast to SouthComms through the open radio channel. However, due to the nature of the incident and the public location, officers were unable to effectively cordon the area.

⁹ oleoresin capsicum (OC) spray

110. Retreat or delay in arresting Mr Hurinui was not an appropriate tactical option considering the immediate threat he posed to the officers and the wider community. Although SouthComms communicated that officers should retreat if they could safely do so, there was nowhere for officers to retreat to that would allow them to carry on negotiating and ensure the safety of the public.
111. The use of CS gas (or 'tear gas'), OC spray, a baton, or a Taser were not appropriate in the circumstances because they all require officers to get very close to the offender.
112. In this instance, Officers C and G decided against using a two-dog attack to try to arrest Mr Hurinui. This was because of the distance between the officers and Mr Hurinui. The distance would have allowed Mr Hurinui plenty of time to react and the officers, realising his behaviour was erratic, did not want to push him into fleeing or firing his weapon. Both officers believed the best tactical option was to continue voice appealing.
113. During the standoff, two civilians, Mr V and Ms X, approached Mr Hurinui to try to get him to put his weapon down. Police did not request any of these people to get involved. Mr Hurinui did not listen to either of these two people and officers quickly told them to move away due to concerns for their safety.

FINDING

Police did consider tactical options other than firearms. However, the other options were not viable or appropriate in the circumstances.

Issue 5: Were Police justified in shooting Mr Hurinui?

114. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender and in defence of themselves or another. However, any force used must be the minimum necessary to achieve the objective, and reasonable under the circumstances as they believe them to be. The Police Tactical Options Framework guides Police in determining the appropriate level of force to use in certain situations (see paragraphs 132-139 for law and Police policy on use of force).
115. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm. 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.
116. In this case Officer A attempted to avoid a lethal outcome by giving Mr Hurinui the opportunity to surrender. Officer A negotiated with Mr Hurinui for 24 minutes and informed him numerous times that he was armed and that he should put the shotgun down. Police and local witnesses said they heard Officer A speak to Mr Hurinui in a loud and clear voice, and said he warned Mr Hurinui not to raise the shotgun or else he would be shot.

117. Mr Hurinui denies pointing the shotgun at Police, and said that his behaviour remained consistent throughout the standoff. Mr Hurinui told the Authority that he believes Officer A shot him because they had ongoing issues and Officer A did not like him.

118. In contrast, Officer A said they shared mutual respect and he believed that he could convince Mr Hurinui to surrender. However, as the standoff progressed, Mr Hurinui's demeanour, which had been up and down, changed to the point where he "*ramped up*" and began to raise his shotgun. This action was witnessed by Officers C, D, E, F, G and J, and Mr and Mrs W. At this point Officer A feared for his life and judged that the situation had reached a point where shooting Mr Hurinui was the only way to protect himself, the other attending officers and the public.

119. The Authority finds that, based on his belief, Officer A was lawfully justified in using a firearm to prevent Mr Hurinui from bringing his shotgun up and firing. This was the only tactical option available to Officer A in the circumstances.

FINDING

Officer A was justified in shooting Mr Hurinui.

Issue 6: Was all reasonable assistance given to Mr Hurinui after he was shot?

120. Immediately after Mr Hurinui was shot, and his weapon was removed, the officers began administering first aid. Within two minutes, a local paramedic arrived and began assisting the officers.

121. An ambulance arrived at the scene three minutes after the shooting. The paramedics took over administering first aid to Mr Hurinui, and he was later transported to hospital.

FINDING

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

CONCLUSIONS

122. The Authority has concluded that:

- 1) Police complied with law and Police policy during the pursuit.
- 2) Officers attending the incident were justified in arming themselves and complied with relevant Police policies.
- 3) The Shift Commander's communication and command and control of this incident complied with policy and good practice.
- 4) Police did consider tactical options other than firearms. However, the other options were not viable or appropriate in the circumstances.
- 5) Officer A was justified in shooting Mr Hurinui.
- 6) Police provided all reasonable assistance to Mr Hurinui after he was shot.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

25 July 2017

IPCA: 15-0390

Fleeing driver policy¹⁰

123. The overriding principle of the Police's fleeing driver policy is that: *"Public and staff safety takes precedence over the immediate apprehension of the offender"*.
124. Officers are required to carry out risk assessments before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police vehicle.
125. If the identity of the offender becomes known the pursuit must be abandoned, unless there is an immediate threat to public or staff safety.
126. Following the direction to abandon pursuit, all participating Police drivers must immediately acknowledge the direction, reduce speed, deactivate the Police car's warning lights and siren and stop as soon as it is safe to do so.

Control and command

127. The 'Radio Protocols' chapter of the Police Manual 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."*
128. 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.
129. 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"*.
130. 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.

¹⁰ The fleeing driver policy has been updated as at 1 June 2016.

131. 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.

Use of force

Relevant law

132. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force in the execution of their duties, such as arrests. 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.”*

133. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*

134. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for any excessive use of force.

Relevant policy

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

136. 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.

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

138. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions, 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.

139. 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.

Use of firearms

140. A Police employee may carry firearms when their perceived cumulative assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the tactical options framework in the 'Use of Force' policy.
141. The Crimes Act provisions are mirrored in Police General Instruction F061 (Fire Orders) in the 'Police Firearms' chapter of the Police Manual. F061 instructs 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.
142. General Instruction F061 provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves or in a less violent manner.
143. In operational situations where firearms are issued, General Instruction F061 also requires that an officer's attention is drawn to the fire orders printed in their Police issue notebook *"if time and circumstances permit"*.
144. Police policy requires officers to notify their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms.

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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