

# Fatal shooting of Christopher Brown in Porirua

## INTRODUCTION

1. At about 12:30am on Sunday 26 February 2017, a Police officer shot Christopher Brown after he threatened the officer with a machete in Mana, Porirua. Mr Brown died as a result of a single gunshot wound.
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

3. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, it is not intended to suggest that the Authority has accepted that particular account.
4. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.
5. The Authority monitored the interviews that Police conducted with the key Police officers involved in this incident.<sup>1</sup> These officers were also interviewed separately by the Authority. Further details of the Authority's investigation are set out in paragraph 68.

## Summary of events

6. Christopher Brown was a 44-year-old man who was living on the Kāpiti Coast at the time of this incident. He had a history of mental illness.

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<sup>1</sup> Officers C and E.

7. At 11:03pm on Saturday 25 February 2017, Ms X made an emergency 111 call to Police to report that her sister, Ms Y, and Mr Brown (Ms Y's ex-partner) were physically fighting at Ms Y's home in Waikanae, on the Kāpiti Coast.
8. Ms X told the Police call-taker that Mr Brown had "*smashed up the house,*" and was suicidal. He had since left the address in Ms Y's green Honda RAV4 (RAV4) and was driving towards Porirua. He had taken a "*large knife*" with him. Ms Y also spoke to the Police call-taker and was very distressed by what had happened.
9. Central Communications Centre (CentComms) immediately sent Officers A and B to Ms Y's home address. The CentComms shift commander and dispatcher<sup>2</sup> checked Mr Brown's details in the Police database, and the dispatcher advised all staff that Mr Brown had staff safety alerts for:
  - family violence;
  - assaulting Police;
  - carrying knives;
  - mental health issues; and
  - suicidal behaviour.<sup>3</sup>
10. The dispatcher also broadcasted the registration number of the stolen RAV4, and advised that Mr Brown was disqualified from driving.
11. A senior sergeant in the Wellington District Command Centre (DCC) started to monitor events, and continued to do so throughout the incident.<sup>4</sup>
12. At 11:08pm, Officers A and B arrived at Ms Y's address, and saw that two panes of glass in the front door had been smashed, and the stock of a gun was lying on the front doorstep. Ms Y told the officers this was from a "*slug gun*" that Mr Brown had taken with him.<sup>5</sup>
13. Ms X and Ms Y told the officers that Mr Brown had smashed the front door and an internal glass door, slashed the wall with the knife and thrown furniture around the living room. He had punched Ms Y several times in the face and had attempted to strangle her, before driving away in Ms Y's RAV4. Ms X's and Ms Y's young children were also in the house.

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<sup>2</sup> A dispatcher is based at the Communications Centre. He or she reads the information entered into the Police computer system and allocates jobs to officers in the area according to availability and priority. The shift commander is the senior officer in charge of the Communications Centre during a shift. The shift commander usually holds the rank of 'Inspector'.

<sup>3</sup> A Police safety alert flags important information about the potential risks that an offender may pose to the Police officers he or she has contact with.

<sup>4</sup> The District Command Centre (DCC) has access to all communications information, and maintains an overall view of policing within a Police District with a focus on crime prevention. The DCC may also act in an incident response capacity, and is able to deploy a wide range of staff and resources under the direct command of the District Commander.

<sup>5</sup> 'Slug guns' are also known as air rifles or air pistols. Police found an air rifle in the RAV4 after Mr Brown had been shot (see paragraph 62).

14. Officer B immediately advised CentComms that Mr Brown had a slug gun with him. Officer A returned to the Police car to arm himself with a Glock pistol and remind himself of Fire Orders.<sup>6</sup> He did not put on ballistic body armour over his stab resistant body armour (SRBA). Officers A and B stayed with Ms Y as she was fearful that Mr Brown might return. The officers took a written statement from Ms Y and took photographs of the damage at her house.
15. Police started to search for Mr Brown and the RAV4. The search was coordinated and monitored by the CentComms dispatcher and shift commander.
16. Officer C was patrolling State Highway 1 near Paekakariki in a marked Police car when he heard about the domestic violence incident in Waikanae over the radio. He took note of the description and registration number of the RAV4, and the fact that it was thought to be travelling southwards. He informed CentComms that he was going to pull over and wait near Pukerua Bay in case Mr Brown drove past him.
17. Mindful that Mr Brown was potentially armed with a large knife and a slug gun, Officer C removed his pistol from the Police car's lockbox, actioned it and placed it in its holster on his hip. He put on ballistic body armour over his SRBA and read Fire Orders. Officer C already had a Taser attached to his utility belt. Officer C stayed in position at Pukerua Bay for the next 45 minutes.
18. At approximately 11:20pm, the dispatcher directed a Police unit to go and watch Mr Brown's last known address in Judgeford.
19. Officer D, a senior dog handler, was on his way to Ms Y's house to support Officers A and B in case Mr Brown returned. He contacted Officer E, another Police dog handler, and directed him to go and support the officers going to the Judgeford address.
20. At 11:47pm, Officer E advised CentComms that he would go to the Judgeford address. Officer E looked up information about Mr Brown (who he did not know) in the Police database using his mobility device, and assessed that Mr Brown posed a safety risk to staff, and also that he might try to run from Police.<sup>7</sup> In both scenarios, he considered that his Police dog would be a useful tactical option.
21. Officer E arrived at the address in Judgeford, and took time to remove his pistol from the lockbox of his Police van, action it and put it in the holster on his hip. He considered Fire Orders, but decided not to wear ballistic body armour. He judged that the primary risk was in fact the large knife as opposed to the slug gun, and decided that, in the circumstances, it was more important for him to retain as much mobility as possible while handling his Police dog. He was already wearing SRBA, which provided him with some protection against being slashed or stabbed.
22. Officer E was not carrying a Taser because, at the time, there were insufficient Tasers available for dog handlers in the Wellington Police District to have guaranteed access.

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<sup>6</sup> An explanation of the circumstances under which Police may use firearms (see paragraphs 139-141).

<sup>7</sup> This is either an iPad or an iPhone that Police officers carry in their vehicles and can use to access Police databases.

23. Police made enquiries at two addresses in Judgeford, but did not locate Mr Brown. Officer E parked at Pauatahanui roundabout and awaited further updates.
24. Meanwhile, Officer D had spoken to Ms Y at her house, and assessed that what had taken place had been quite violent, and amounted to aggravated robbery.<sup>8</sup> He communicated this information to CentComms and to Officer E, and advised Ms X and Ms Y to leave the address for the night for their own safety. Ms Y declined, and Officer D remained parked outside Ms Y's address in case Mr Brown returned.
25. At approximately midnight, a family member informed Police that Mr Brown had visited her in Otaki (north of Waikanae) in a "very angry" state, and had just left in the RAV4. It was unclear where he had gone. At 12:10am, Police established that Mr Brown had left Otaki approximately 20 minutes earlier. The dispatcher broadcast this information to all Police units.
26. Officer D left Waikanae and started driving northwards towards Otaki to search for the RAV4. Officer E remained at Pauatahanui. Officers D and E had spoken on the phone and agreed that a Police dog handler needed to be present when the RAV4 was stopped, due to the threat Mr Brown presented to Police.
27. Officer E was mindful of the importance of locating and arresting Mr Brown as soon as possible, to prevent him from returning to Ms Y's home and further assaulting her. He explained:

*"...as with family violence incidents in the past that I've been to and in my experience ... offenders do return to those, to y'know the scenes of those incidents and ... to those victims ... sometimes immediately. Sometimes a couple of hours. Sometimes a couple of days ....*

*...it can happen before Police have had a chance to um locate the offender and deal with what has happened. At that time Police were at the address so the victims were safe at that immediate time but the Police weren't gonna be there all night...I did place a lot of importance on stopping this man."*

### The RAV4 is located

28. Officer C had been searching for the RAV4 north of Pukerua Bay, but had returned to his original position beside State Highway 1. He was still armed, because the RAV4 had not yet been found.
29. At 12:23am, Officer C was speaking on his cellphone when he saw the RAV4 drive past him, travelling southwards behind two other vehicles at approximately 60kph. Officer C quickly ended the call and pulled out onto State Highway 1. He announced over the radio that he had located the RAV4, its speed and direction of travel.

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<sup>8</sup> Aggravated robbery involves grievous bodily harm (serious injury to someone), two or more people working together in a robbery, or a robbery where the offender had a weapon. It is punishable by up to 14 years imprisonment, pursuant to section 235 of the Crimes Act 1961.

30. Officer C maintained a distance of 100 metres behind the RAV4 and did not activate his emergency flashing lights and sirens. He judged it unsafe to attempt to stop RAV4 by himself, and he did not want Mr Brown to react and speed away. Officer C continued to provide radio updates as the vehicles approached Plimmerton. The RAV4 maintained steady progress southwards, travelling well under the speed limit.
31. A sergeant radioed: *“Highway units from KPS2. Just assure you are armed before you consider a [vehicle stop]. Please, treat with caution.”* Officer C confirmed over the radio that he was armed.
32. The CentComms shift commander had moved over to the dispatcher’s desk and was monitoring Officer C’s radio transmissions. He considered options for stopping the RAV4, including the use of road spikes. Due to the threat posed by Mr Brown, he did not want the RAV4 to drive past Mana Bridge, towards more densely populated areas to the south.<sup>9</sup> The nature of the road from this point onwards would also allow Mr Brown to drive at higher speeds.
33. Meanwhile, Officer E had activated his emergency flashing lights and advised CentComms that he was driving from Pauatahanui towards the intersection of Grays Road and State Highway 1, just south of the Plimmerton roundabout.
34. At approximately 12:27am, the RAV4 drove through the Plimmerton roundabout, followed at a distance of approximately 20 metres by Officer C and another unmarked Police car, driven by Officer F.
35. Officer E arrived at the Grays Road intersection and was waiting with his emergency flashing lights deactivated. As the RAV4 and Officer C travelled through the intersection, Officer E saw that the only person in the RAV4 was a male driver. Officer E took a left turn through a red traffic light at low speed and slotted into the traffic behind Officer C. Officer E informed CentComms that he was now the second Police vehicle behind the RAV4. Mr Brown’s manner of driving remained unchanged.
36. The CentComms shift commander authorised a Police unit positioned on Mana Bridge to prepare road spikes.

#### **Police pursue and stop the RAV4**

37. The RAV4 and the three Police vehicles approached the first set of traffic lights on Mana Esplanade. Mr Brown had the option of continuing straight ahead towards Mana Bridge, turning left into Acheron Road or right into a service lane running past the Sandbar pub (which was closed).
38. Officer E stated over the radio that if the RAV4 stopped on a red light at the upcoming intersection, Officer C should stop behind the RAV4 to prevent it from reversing, while he

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<sup>9</sup> Mana Bridge is approximately two kilometres south of the Plimmerton roundabout.

would drive around the right hand side of both vehicles and pull in front of the RAV4 to block it from driving away. The CentComms shift commander approved this plan over the radio.

39. As the RAV4 approached the intersection, the traffic lights turned green and Mr Brown turned right in to the service lane. Officer C advised CentComms that the RAV4 was now driving past the Sandbar pub. Officer F turned right into the forecourt of a petrol station to block this route in case Mr Brown decided to flee. Officers C and E followed the RAV4 into the service lane.
40. Officer E directed Officer C to activate his lights and sirens to signal Mr Brown to stop. Officer C decided to wait until the RAV4 had committed to turning left or right at the T-intersection at the end of the service lane. The RAV4 turned left, and Officer C turned on his emergency flashing lights. Officer E put on his flashing lights and siren.
41. The RAV4 accelerated forwards, and Officer C broadcast that the RAV4 had failed to stop and switched on his siren. The dispatcher issued the pursuit warning (which Officer C did not acknowledge), and directed all other units to remain silent to allow Officers C and E to provide radio updates.<sup>10</sup>
42. The RAV4 veered to the left and hit a building at a point where the road narrowed, approximately 200 metres from the T-intersection. There was a row of apartments to the left, and a fenced-off train line to the right. The immediate area was well-lit by streetlights and lights mounted on the building that Mr Brown had hit.
43. Officer C broadcast: *"The vehicle's stopping, the vehicle's stopping!"* and stopped his Police car approximately six metres behind the RAV4. Officer E drove past the right hand side of Officer C's Police car, turned inwards so the Police van was positioned on a 45 degree angle towards the RAV4, and *"slammed"* the Police van into park. He turned off his siren.
44. As Officer E stopped, he saw Mr Brown open his driver's door. An examination of the scene after this incident showed that the distance between the driver's door of the RAV4 and the driver's door of the Police van was approximately eight metres.
45. Anticipating that Mr Brown intended to run away, Officer E released his seat-belt, opened his driver's door and put his right foot on the ground, while keeping his eyes on Mr Brown. He intended to run to the back of his Police van to get his Police dog.

### Police shoot Mr Brown

46. Officer E said that as soon as Mr Brown got out of the RAV4, Mr Brown started to approach him, holding a machete beside his leg with the blade pointing downwards.<sup>11</sup> Officer E cannot recall which hand Mr Brown was holding the machete was in.
47. Officer E leant forward and yelled: *"Police, drop the fucking machete!"* through the 'V'-shaped gap created between the A-pillar of the windscreen and the open driver's door of the Police

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<sup>10</sup> When a pursuit commences, the dispatcher must advise the lead Police driver: *"If there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge."*

<sup>11</sup> The blade of the machete measured approximately 46 cm and the wooden handle measured approximately 13cm.

van. He said that Mr Brown did not acknowledge this direction or say anything, and started to raise the machete while walking quickly towards him. Officer E believed that Mr Brown was “fixated” on him and was about to attack him with the machete.

48. Meanwhile, Officer C was still sitting in his Police car when Mr Brown got out of the RAV4. He said that Mr Brown gave both officers a look of “complete anger”, as if to say ““which one of yous want it first?”” Mr Brown then yelled something indiscernible before he started to move quickly towards Officer E, shaking the machete in the air.
49. Officer C released his pistol from its holster and started to open the door of the Police car. He said that he believed that Mr Brown intended to kill both himself and Officer E, and was going to attack Officer E first. Officer C could not see Officer E due to the angled position of the Police van.
50. Officer E had remained in the driver’s seat watching Mr Brown advance rapidly towards him. He said that he judged he only had one opportunity to act to protect himself, and quickly considered his tactical options.
51. When Mr Brown passed the front right corner of the Police van, Officer E said he saw the blade of the machete “coming up.” He drew his pistol from its holster and aimed it at Mr Brown, who was now moving along the side of the Police van and into the gap between the windscreen and open driver’s door. Officer E told the Authority that, at this point, Mr Brown was less than a metre away from him:

*“He’s coming down the front of my bonnet to the point he’s either going to push my door on me which my foot was in...or he was gonna go around...you know basically swing around the edge of my door. From that minute he was at that point in that ‘V’ he could either attack me over the top...or he could [have] gone around the door and sort of hit at me...”*

*It would only take one hit with a machete to either incapacitate me or render me, you know, ineffective to fight against him...”*

52. Officer E yelled loudly: “Stop, armed...”, but did not finish the instruction before assessing that Mr Brown was now close enough to strike him with the machete. Officer E fired once at Mr Brown through the gap between the windscreen and the driver’s door. He told the Authority that he fired to “protect myself.”
53. The bullet hit Mr Brown’s right shoulder. He swung around and fell onto his back beside the Police van while still gripping the machete. Officer E stood up, aimed his pistol at Mr Brown and put his left foot firmly on to Mr Brown’s wrist to prevent him from striking out with the machete.
54. Officer E told the Authority that the period of time between Mr Brown getting out of the RAV4 and when he decided to fire his pistol was approximately five seconds.
55. Officer C heard the gunshot and ran around the back of the Police van, with his pistol raised. He was concerned that Mr Brown might not have been fully incapacitated, and that Officer E

was still in serious danger. He saw Mr Brown lying on the ground, bleeding, and heard Officer E yell: *“Let go of the machete!”*

56. Officer C removed the machete from Mr Brown’s hand and threw it several metres away, then went to get a first aid kit from his Police car.<sup>12</sup> Officer C cannot remember which hand Mr Brown was holding the machete in. Officer E holstered his pistol and removed his foot from Mr Brown’s wrist.
57. At approximately 12:30am Officer C advised CentComms that Mr Brown had been shot and requested an ambulance. It had been 32 seconds since his last transmission (see paragraph 42).
58. Officers C, E and other officers who had arrived to assist, provided Mr Brown with first aid. Officer F, one of the first officers to arrive at the scene, placed a handcuff on one of Mr Brown’s hands in order to secure him. This was quickly removed when Officer F realised that Mr Brown had been shot, and it was evident that he was seriously injured and posed no further threat.
59. A detective sergeant arrived and started directing officers at the scene, ensuring that first aid was being suitably provided and the scene was cordoned off from the public. However, he did not formally take control of the incident from the CentComms shift commander.
60. The available ambulances were some distance away, and the first ambulance arrived at approximately 12:49am. Police considered using the rescue helicopter to transport Mr Brown to hospital, but judged that this would not be a quicker option for several reasons, particularly as the helicopter was unable to land directly at the scene. Mr Brown died from his gunshot injuries en route to Wellington Hospital.
61. The senior sergeant in the DCC informed the Acting District Commander about the shooting, obtained updates from the detective sergeant and started to organise Police officers from Wellington and the Hutt Valley to assist at the scene.
62. Police searched the RAV4 and found an air rifle (slug gun) with a broken wooden stock. The air rifle was unloaded, and there were no pellets or other ammunition in the RAV4.
63. Officer E was tested for the presence of alcohol, and returned a negative test. Both Officer C’s and E’s firearms and some equipment were seized as evidence and forensically examined. Both officers were formally interviewed about their part in the incident, and were stood down from work in accordance with the Police trauma policy.
64. On 19 May 2017, Police conducted a debrief in accordance with Police policy. A separate debrief had already been carried out with Officers C and E.

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<sup>12</sup> The machete was placed in Officer C’s car while Mr Brown was attended to. It was then seized as evidence.



## Police involved

65. Officer C had nine years' service in the New Zealand Police and Officer E had twelve years' service in the New Zealand Police at the time of this incident. Both officers were current in all relevant certifications.

## Police investigation

66. Police carried out a criminal investigation into the use of force against Mr Brown and determined that Officer E's actions were justified.
67. The Institute of Environmental Science and Research (ESR) analysed samples of Mr Brown's blood and urine, and found evidence of prescription medication, alcohol and cannabis.

## THE AUTHORITY'S FINDINGS

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68. The Authority visited the scene of the shooting and interviewed Mr Brown's family. The Authority also interviewed Officers A, B, C and E, and the CentComms shift commander, monitored the Police investigation throughout and reviewed the documentation produced by the Police investigation team. The Authority watched footage of Mr Brown driving through Plimmerton and Mana, taken by Traffic Operations Centre cameras.
69. The Authority considered the following issues:
- 1) Did Police respond in a timely manner to the domestic violence incident, and deal with it appropriately?
  - 2) Did Police respond appropriately to the sighting of the RAV4?
  - 3) Was Officer E legally justified in shooting Mr Brown in order to defend himself?
  - 4) Did Police provide Mr Brown with appropriate and timely medical assistance?

### **Issue 1: Did Police respond in a timely manner to the domestic violence incident, and deal with it appropriately?**

70. Upon receiving information that Mr Brown was fighting with Ms Y and had left the house armed with a "large knife" in Ms Y's RAV4, Police immediately dispatched Officers A and B to attend the domestic incident. Information held about Mr Brown on the Police database confirmed that he could be violent and unpredictable, and therefore posed a threat to the public and to Police (see paragraph 9).
71. Officers A and B arrived at Ms Y's house within five minutes of Ms X's emergency call. After talking with Ms Y and Ms X and seeing the damage at the house, the officers established that this had been a violent domestic incident, and that Mr Brown was also armed with what was thought to be a slug gun.

72. Officer B made CentComms aware of this so that other officers could be informed of the heightened risk, and Officer A armed himself with a pistol in case Mr Brown came back.
73. Police made concerted efforts to locate Mr Brown and the RAV4. Officers C and E took part in the search and independently decided to arm themselves at an early stage in the search.
74. The Authority considers that Police responded in a timely manner to Ms X's emergency call, and appropriately ensured that Ms Y and her family were safe while Police searched for Mr Brown.
75. It was appropriate for Officers A, C and E to arm themselves on the basis that Mr Brown posed a risk of death or serious bodily harm due to his safety alerts on the Police database, his violent behaviour that evening and the weapons he was thought to be carrying (see paragraph 138 for the relevant Police policy).
76. Paragraph 142 sets out requirements for Police officers when arming themselves. The officers partially complied with Police policy:
- a) None of the officers informed CentComms that they were armed at the time they decided to arm themselves, which they should have done.
  - b) Officers A and C had Tasers with them, as generally required. Officer E did not have a Taser available to him, for operational reasons (see paragraph 22). Police policy only requires an officer to carry a Taser while armed if one is available.
  - c) Officer C put on ballistic body armour, but Officers A and E did not do so. Police policy requires officers to put on ballistic body when attending an incident where firearms could be present, for their own safety (see paragraph 143). While Police had been advised that the instrument that Mr Brown had taken with him was a slug gun, this fact had not been verified by Police. There was a possibility that it had been misidentified, and it was in fact a firearm. Based on this risk, Officers A and E should have put on their ballistic body armour.
77. All three officers turned their minds to Fire Orders as required by Police policy.

## FINDINGS

Overall, the initial Police response to this incident was timely and appropriate.

Officers A, C and E were justified in arming themselves, although:

- all three officers should have informed CentComms when arming themselves; and
- Officers A and E should have worn ballistic body armour for their own safety.

## Issue 2: Did Police respond appropriately to the sighting of the RAV4?

78. Police placed high importance on locating and arresting Mr Brown, because he had seriously assaulted and stolen from Ms Y, and Police believed there was a reasonable risk that he would return to Ms Y's house and harm her or others in the house. Mr Brown also posed a general risk to the public because he was in an agitated state and was carrying weapons. He had last been seen by a family member in a "very angry" state (see paragraph 25).
79. Police looked for Mr Brown for more than an hour before finally locating him near Pukerua Bay. Throughout this period, the CentComms shift commander had overall control of the incident, and directed officers to make enquiries at Mr Brown's last known address in an effort to locate him quickly.
80. When Officer C sighted the RAV4 driven by Mr Brown, he alerted CentComms and discretely followed the RAV4. He appropriately judged that it was unsafe to try to stop Mr Brown by himself, and that there was no critically urgent need to do so, since Mr Brown was driving at a safe speed and was not showing immediate signs of fleeing from Police (see paragraph 30).
81. Officer C provided frequent updates regarding Mr Brown's direction of travel and manner of driving, allowing other Police units (including Officer E) to come and assist, and the CentComms shift commander to plan how to safely stop the RAV4.
82. Once it was apparent that Mr Brown was continuing along State Highway 1 onto Mana Esplanade, the CentComms shift commander decided that Mr Brown could not be allowed to travel south of Mana Bridge as he could be harder to stop and would pose too great a risk to too many people. Mana Esplanade constituted the best opportunity to achieve a low speed vehicle stop, since the road was straight, well-lit and had a speed limit of 50kph. The CentComms shift commander gave the appropriate approvals to Officer E and a Police unit with road spikes to prevent this from happening (see paragraphs 32, 36 and 40).
83. However, Mr Brown chose to turn off the main road, and Police had to adjust their planning. Mr Brown had turned into a series of narrow service roads behind a pub and shopping area, where it would be difficult for him to flee at speed. Given the importance of stopping Mr Brown, Police decided to follow him.
84. Officer C signalled him to stop, saw that Mr Brown was accelerating and followed correct procedure by notifying CentComms that Mr Brown had failed to stop and Police were in pursuit.
85. Police were justified in attempting to stop the RAV4 under section 9 of the Search and Surveillance Act 2012, because they had reasonable grounds to suspect that Mr Brown had committed aggravated robbery, which is an offence punishable by imprisonment.<sup>13</sup> Police would also have been justified in stopping Mr Brown pursuant to section 114 of the Land Transport Act 1998, because Mr Brown was disqualified from driving (see paragraph 10).

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<sup>13</sup> Crimes Act 1961, section 2.

86. The CentComms dispatcher provided the required pursuit warning (which Officer C did not have time to acknowledge), and ensured that any further radio communication in respect of Mr Brown had priority.
87. Once the RAV4 collided at low speed with a building, Officers C and E positioned their Police vehicles to prevent Mr Brown from being able to reverse the RAV4 back down the way he had come. Officer E told the Authority that he deliberately positioned himself in front of Officer C because he wanted to be in the best position to respond with his Police dog if Mr Brown got out of the RAV4 and tried to run away. Mr Brown had already demonstrated a desire to get away from Police.
88. The Authority considers that Police responded appropriately to the sighting of Mr Brown and coordinated well to stop the RAV4 as safely as possible.

## FINDINGS

The search for Mr Brown was well-coordinated and conducted with appropriate urgency.

Once Mr Brown had been located, Police appropriately adopted a cautious approach and waited until sufficient staff were available to stop the RAV4 in a safe environment.

Officer C was justified in commencing the pursuit.

Police complied with policy in respect of communication during the pursuit.

### Issue 3: Was Officer E legally justified in shooting Mr Brown in order to defend himself?

89. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another. 'Legal justification' in this sense means that this person is not guilty of an offence or liable to any civil proceeding in connection with their use of force.<sup>14</sup> The full section is set out in paragraph 130.
90. In order to rely on this defence, a person's actions must be assessed on a subjective and objective basis. This assessment involves three questions:<sup>15</sup>
  - 1) What were the circumstances as the person believed (subjectively) them to be?
  - 2) Did the person use force for the purpose of defending himself or herself or another (objectively)?
  - 3) Was the force used reasonable (objectively) in those circumstances?
91. Police policy reflects the legal position under section 48. It provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm.
92. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to affect an arrest or disarm an offender if they are available. However if

<sup>14</sup> Crimes Act 1961, section 2.

<sup>15</sup> *Adams on Criminal Law* (Brookers, Wellington, 1992) Crimes Act, para CA48.01

further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender.

*What circumstances did Officer E believe he was facing?*

93. At the moment that Officer E stopped behind the RAV4, he knew that Mr Brown:
- had just violently assaulted his ex-partner;
  - had chosen to arm himself;
  - was extremely agitated and potentially suicidal; and
  - had acted violently towards Police in the past.
94. Further, he could not allow Mr Brown to get away from him because Mr Brown posed a risk to Ms Y and her family.
95. Officer E told the Authority that, as soon as Mr Brown got out of the RAV4, he could see that Mr Brown was armed with a machete. He would not respond to Officer E's shouted direction to drop it; rather, he raised it and started advancing towards him.
96. Officer E also said that Mr Brown made no attempt to communicate with him, and was "fixated" on him. He said: "...it was menacing. It was like he was a man on a mission. He was in robot mode."
97. Conversely, Officer C thought that Mr Brown yelled something (see paragraphs 46-48). Regardless of this discrepancy, both officers spoke of the "anger" and "menace" they believed was directed towards them by Mr Brown, expressed through his body language, eye contact and finally, by quickly approaching Officer E while raising the machete. Both officers said they were in no doubt that, for whatever reason, Mr Brown wished to harm them.
98. Due to the speed that Mr Brown was advancing over the short distance, Officer E also said that he judged he only had one opportunity to act and that his options were limited. Whichever option he chose needed to be able to immediately and effectively incapacitate Mr Brown.
99. By the time Mr Brown was a metre away, Officer E said he believed that he was close enough to strike Officer E down with the machete, and that this was what Mr Brown intended to do. He expected that he would be killed, or rendered unable to defend himself from further blows (see paragraphs 51-52).
100. The Authority has established that, at the point that Officer E decided to fire his pistol at Mr Brown, he believed that Mr Brown was intending to kill or seriously injure him, that he was capable of doing so with the raised machete, and that this threat was imminent.

*Did Officer E use force for the purpose of defending himself or another?*

101. Officer E told the Authority that he fired his Glock "to protect myself" (see paragraph 52). He also said that he was mindful of Officer C's safety, as they were "protecting each other."

102. Officer E did not know Mr Brown (see paragraph 20), and consequently had no personal reason to harm him. Officer E also left the decision to fire until the last possible minute, giving Mr Brown every opportunity to retreat and avoid harm.
103. The Authority is satisfied that Officer E fired his pistol primarily in order to protect himself, and also to protect Officer C.

*Was it reasonable for Officer E to fire his pistol in the circumstances he believed he was facing?*

104. Officer E feared that he was about to be attacked and killed with a machete. The Authority must assess whether there was any less-than-lethal option available to him with which Officer E could have defended himself.
105. Officer E told the Authority that he undertook a mental analysis of his options as Mr Brown approached him:
- Pepper spray or a baton would not provide sufficient protection against a machete.
  - He did not have time to run to the back of the van and get his Police dog before Mr Brown reached him.
  - He considered driving forward and running Mr Brown over. However, at this point Mr Brown was close to the front of the Police van and was moving quickly. Officer E did not think he had time to change gear into 'drive', put his foot on the accelerator and move forward at sufficient speed to incapacitate Mr Brown. If he drove forward too slowly, Mr Brown could side-step the Police van and would still be in a position to attack.
  - He also considered reversing the Police van, but was unsure whether Officer C had got out of his Police car, and if so, where he was positioned).
106. Officer E said that he did not want to retreat, as to do so would leave Officer C exposed to the same threat, and needing to take some sort of action to protect himself. As a Police dog handler, Officer E had a high level of tactical training and significant experience in dealing with highly aggressive and dangerous people. He said that he did not know if Officer C had the same tactical skills as he had.
107. The Authority has concluded that his analysis and decisions to discount these options were objectively sound:
- Low-force options such as pepper spray and a baton would require Mr Brown to get too close before they could be used, and could not overcome a machete.
  - Officer E did not have time to get his Police dog out, or to reliably incapacitate Mr Brown by running him down with his Police van.
  - Officer E could not reasonably retreat as this would leave Officer C exposed to the same threat, and also could allow Mr Brown to get away from Police altogether. Mr Brown was highly agitated and wielding a machete in a public place (with residential apartments nearby), and needed to be brought under control as soon as possible.

Officer E did not know that Officer C was equipped, prepared or in a position to do this himself.

108. At the moment he fired, Officer E said Mr Brown was approximately one metre away and was bringing the machete up into a striking position (see paragraphs 51 and 52). The Authority is satisfied that it was reasonable for Officer E to fire his pistol in these circumstances.
109. In reaching this finding, the Authority notes that Officer C had also come to the conclusion that Mr Brown was about to attack and potentially kill Officer E, and had also drawn his pistol, rather than his Taser, in order to go and defend Officer E (see paragraphs 17, 49 and 55).

#### *Taser as a tactical option*

110. Even though Officer E was not armed with a Taser, the Authority has considered whether a Taser could have been used by Officer E as a non-lethal option to protect himself in these circumstances.
111. Police policy at the time only required a Police officer to carry a Taser when one was available. When this incident took place, there were not enough Tasers in the Wellington Police District for every Police officer to have one while working.
112. Policy required a District Commander to make a Taser available to general duties officers, highway patrol officers and strategic traffic units. These officers took priority within the Wellington Police District when arming themselves with Tasers at the start of their shifts. Police dog handlers (such as Officer E) did not receive priority because they already had an additional non-lethal tactical option available to them (their Police dog).
113. Due to the nature of their work, Police dog handlers deploy from their homes rather than from a Police station where fully charged Tasers are normally kept.
114. Police dog handlers based in the Wellington Police District could not keep a Taser with their personally issued equipment at home because this would not leave enough Tasers available to other officers. In addition, Police dog handlers did not have access to supporting equipment necessary to charge and securely store a Taser at home.
115. In circumstances when it was practical for a Police dog handler in the Wellington Police District to go to a Police station at the beginning of their shift, the Authority understands that there were often no Tasers left for them. Consequently, most Police dog handlers stopped going to Police stations to check whether a Taser was available.
116. The Authority is satisfied that Officer E was complying with Police policy at the time of this incident by not carrying a Taser, because one was not reliably available to him.
117. Irrespective of the fact that Officer E was not armed with a Taser, a Taser is not always an appropriate tactical option, depending on the circumstances.
118. When a Taser is fired, there is a reasonable chance that one or both probes necessary for creating the electric current will miss the offender, or will not be positioned properly to create

an electrical circuit. Other variables, such as the nature of the offender's clothing, can also impact on its effectiveness.

119. Mr Brown presented an immediate threat of death or serious injury to Officer E. In the Authority's view, there was too great a risk that a Taser would have failed to incapacitate Mr Brown for it to be a reasonable tactical option in these circumstances.

#### FINDINGS

It was lawful and reasonable in the circumstances for Officer E to fire at Mr Brown in defence of himself and Officer C.

Although Officer E did not have a Taser available to him, a Taser would not have been a suitable tactical option in the circumstances.

#### Issue 4: Did Police provide Mr Brown with appropriate and timely medical assistance?

120. After Mr Brown was shot, Police quickly called an ambulance to the scene, but the available ambulances were some distance away from Mana. Police considered alternate ways of getting Mr Brown medical attention as quickly as possible (see paragraph 60). The officers present provided Mr Brown with first aid until the first ambulance arrived.
121. Officer F temporarily applied a handcuff to Mr Brown, but he did this without realising how seriously injured Mr Brown was, and that he did not pose a threat. The Authority is satisfied that he removed the handcuff as soon as he became aware that it was unnecessary.

#### FINDING

All reasonable assistance was provided to Mr Brown after he was shot.

#### SUBSEQUENT POLICE ACTION

122. Police policy now requires District Commanders to make Tasers available to Police dog handlers. The expectation is that Police dog handlers will routinely carry a Taser. In some situations where there is a very low operational risk, or where carrying a Taser would be inappropriate (such as during a school visit), the Police dog handler may decide not to carry a Taser.
123. There are now a sufficient number of Tasers in the Wellington Police District for all Police dog handlers to carry a Taser when working, and it is expected that these officers will routinely carry a Taser.
124. All Police dog vans in the Wellington Police District are in the process of being fitted with lock boxes that allow Tasers to be securely stored while charging. This will permit Police dog



handlers in the Wellington Police District to be personally issued with Tasers that they can keep with their other equipment at all times.

## CONCLUSIONS

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125. The Authority has determined that at the time Mr Brown was shot, Officer E reasonably believed that Mr Brown posed an immediate threat of death or serious bodily harm to him, and in the circumstances his shooting Mr Brown was a proportionate response taken to defend himself.
126. Police responded appropriately to the domestic incident that precipitated the final confrontation with Mr Brown, and proactively searched for him. After locating Mr Brown, Officers C and E stopped him safely. Police provided Mr Brown with appropriate medical assistance after he was shot.
127. Officers A, C and E should have informed CentComms when arming themselves. Officers A and E should have worn ballistic body armour for their own safety and protection.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

15 February 2018

**IPCA: 16-1687**

### Legislative authority for pursuits

128. Under section 9 of the Search and Surveillance Act 2012, Police are empowered to stop a vehicle to arrest a person if they have reasonable grounds to suspect that a person in that vehicle has committed an offence punishable by imprisonment.

### Use of force

129. 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.”*
130. 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.”*
131. 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

132. 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.
133. 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.
134. 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)).

135. 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.
136. 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.
137. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

## Firearms

### *Authorisation to carry firearms*

138. The Police Manual authorises an officer to 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...."*

### *Use of firearms*

139. 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 138 and in accordance with the Crimes Act provisions referred to in paragraphs 129-131).
140. 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."*
141. 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.
142. The Police Manual sets out the following requirements when officers arm themselves:
- 1) Notification of Police Communications: 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) Taser: Police should take a Taser with them (if one is available).
  - 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.
143. At the time of this incident, policy required officers to wear approved ballistic body armour when deploying to an incident where they believe firearms are present or could be present.





## ABOUT THE AUTHORITY

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### 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 Colin Doherty.

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?

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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.

### This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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