
Use of Taser during arrest in Auckland

INTRODUCTION

1. In the early morning of 5 February 2017, Police were called to Olympic Park in New Lynn, Auckland, by a member of the public who said she and her husband had been threatened by a group in the park.
2. When Police arrived, a group of about seven people, including Mr X, were in the carpark drinking alcohol. As Olympic Park is an alcohol ban area and due to the alleged behaviour of the group, Police asked them to leave. However Mr X became agitated and threatening. The situation escalated, and Police used pepper spray on Mr X and two others. Police then tasered Mr X.
3. The Police notified the Independent Police Conduct Authority of the matter in July 2017, after TaserCam footage was reviewed. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

4. 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, the Authority does not intend to suggest that it has accepted that particular account.
5. 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.

Summary of events

6. In the early hours of 5 February 2017, Officer A was working as a dog handler and was on patrol by himself.
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7. Officer A said that earlier in his shift, he had been exercising his Police dog at a field in Olympic Park, when he was approached by a member of the sports club that had clubrooms at the park. He told Officer A that there had been some issues with vandalism by people drinking in the carpark, and asked Police to be aware of that during their routine patrols.
8. A member of the public made a 111 call to the Police at about 1.16am. She said that she and her husband had gone to use the public toilets in Olympic Park when a group of at least five males had sworn at them and tried to “rush” her husband. She told Police that the group was drinking. Olympic Park is an alcohol ban area¹.
9. Officer A heard a broadcast on the Police radio for available Police officers to go to Olympic Park. He advised the Police Northern Communications Centre (NorthComms) that he would attend the incident.
10. The shift sergeant, Officer B, was on patrol in the New Lynn area at the time by himself. He also heard the broadcast and radioed to say that he would attend. Officer B later told the Authority that Police often go to Olympic Park to talk to people who are breaching the alcohol ban and encourage them to move along.
11. Officers A and B arrived at the scene at about the same time. There were at least two cars parked next to each other in the carpark. Officers A and B observed a group of about seven people standing around the area where the cars were parked. The people in the group were drinking alcohol, and the officers could see discarded cans of alcohol in the area.
12. Officers A and B parked their cars and went to speak with the group. Officer A left his Police dog in the car. As he and Officer B approached the group, Officer A assessed that he and Officer B would not be able to manage the situation by themselves, so he radioed for back-up.
13. Officer A then spoke with individuals from the group, in an effort to identify the drivers and encourage them to move along.
14. At the same time, Officer B spoke with a member of the group, Mr W, and got his details. Officer B told the group that it was an alcohol ban area and that there had been a complaint about them. He asked them to get in their cars and go home. Mr W seemed willing to do as they asked, however another member of the group, Mr X, refused to comply with Officer B’s instructions.
15. Mr X was 18 at the time of this incident. He is 178 centimetres tall and of strong build. He told Officer B to “fuck off pig”, and began posturing for a fight.

Use of pepper spray

16. The other members of the group started putting their alcohol away. Mr X got another can of alcohol and opened it in front of Officer B. Officer B took the can from Mr X and tipped out its contents. He again advised Mr X that they were in an alcohol ban area and to go home. Officer

¹ Under section 169 of the Local Government Act 2002, Police have the power to arrest anyone who does not comply with a request to leave the alcohol ban area.

B repeatedly told Mr X that if his behaviour continued and he did not leave, he would be arrested.

17. Officer B said that Mr X continued swearing at him and challenging him to fight. Mr X yelled *"Fuck the Police, I'll take you on one on one"*. Officer B again warned him that if he did not move on, he would be arrested for disorderly behaviour. Mr X did not leave and continued challenging Officer B.
18. Officer B later said that Mr X's behaviour caused the others in the group to *"become aggressive and obstructive and advance towards us in a threatening manner"*, and led Officer B to fear for his safety. Officer B told Mr X to leave, or he would be pepper sprayed².
19. Mr X continued to yell *"I'll fucking take you on pig"*. Officer B then told Mr X that he was under arrest for disorderly behaviour. Mr X advanced on him, so Officer B sprayed him in the face with pepper spray.
20. When he was pepper sprayed, Mr X fell to the ground. Officer B told Mr X to stay on the ground, and put his hands behind his back. Initially Mr X put one hand behind his back, however when Officer B attempted to handcuff him, he *"reacted violently, pulling his arm away"*. Mr X then stood up and charged at Officer B, swinging his fists. The other members of the group had become more agitated by this point.
21. Meanwhile, Officer A noticed Officer B attempting to handcuff Mr X and saw that Mr X was about to assault Officer B. Officer A again radioed for back-up.

Use of Taser

22. Officer A turned on his Taser to 'laser paint' Mr X.³ Turning on the Taser automatically activates its video camera and audio recording ('TaserCam'). Officer A warned Mr X of the Taser, saying *"Taser 50,000 volts, calm down"*.⁴ This had no apparent effect on Mr X, who responded *"I don't give a fuck"*. TaserCam footage shows Mr X wrapping his shirt around his wrist, with his fists raised in a fighting stance and a red 'Bloods' bandana tucked into the front of his trousers.⁵
23. Officer A observed that the other people present seemed to be incited by Mr X's behaviour, and were becoming aggressive. He feared that an assault on him and Officer B was imminent. He later said in his Police interview that he was conscious they were *"alone in the dark with seven drunk, athletic and aggressive"* people. Officer A arced his Taser, verbally warning Mr X again and telling him to calm down.⁶

² The official name for pepper spray is Oleoresin Capsicum (OC) Spray.

³ Police policy describes 'laser painting' as *"Overlaying the laser sighting system of the Taser on a subject as a visual deterrent, in conjunction with a verbal warning"*.

⁴ Officer A was appropriately certified to use a Taser at this time. He was also a certified Taser instructor between 27 October 2014 and 27 October 2017.

⁵ The Bloods are a New Zealand Street gang. They are associated with the colour red and often sport bandanas, badges, or other signs to show their affiliation.

⁶ Police policy describes 'Arcing' a Taser as pushing the Taser's Arc button, which displays an arc of electricity across the front of the Taser. This is used as a visual deterrent in conjunction with a verbal warning.

24. The other members of the group became increasingly aggressive, and Officer A pepper sprayed two of them (Mr Y and Mr Z). He later explained that this was because they were “*exhibiting assaultive and threatening behaviour towards us*”.
25. Mr X then began swinging punches and “*thrashing around*”. In Officer A’s view, Mr X posed the greatest threat. Officer A later wrote in his Tactical Options Report (TOR) that he could not delay discharging the Taser any longer. Officer A discharged the first Taser cartridge at Mr X, however Mr X was still swinging his arms, and one of the Taser probes did not make contact with him.⁷ Officer A therefore discharged the second Taser cartridge, and both probes made contact with Mr X.⁸ This incapacitated Mr X, and he fell to the ground on his back.
26. TaserCam footage shows Mr X momentarily rolling to his right side, and then onto his back again. When Mr X rolled onto his side, Officer A pressed the arc button on his Taser and delivered another burst of electrical current to Mr X through the probes (‘re-energising’ the Taser).
27. Officer A later said that he was looking down at the arc button on his Taser before re-energising it, and he did not see Mr X rolling back over onto his back. However, when he later viewed the TaserCam footage of the incident, Officer A maintained his view that there was no real change in Mr X’s behaviour.
28. Officer A told the Authority that he thought the Taser’s effect had worn off, and that Mr X was in the process of getting back up. Officer A was certain that Mr X’s “*grievously assaultive*” behaviour would continue. He said that to neutralise the threat in the least violent way, while keeping himself and Officer B safe, he re-energised the Taser for a one second burst.⁹ At the same time as re-energising the Taser, Officer A yelled “*don’t move, stay there*” to Mr X.
29. When Officer A re-energised the Taser, Mr X was incapacitated again. Officer A continued to command Mr X not to move, warning him that he would be tasered again if he did not comply. Officer B told Mr X to put his hands behind his back. Mr X rolled onto his front, with his hands behind his back. Officer B handcuffed Mr X. TaserCam footage shows Mr X exclaiming “*my eyes*” and asking for assistance for the stinging caused by the pepper spray.
30. At this point, additional Police officers arrived to assist with arresting some members of the group and getting the others to leave the area.

Medical assistance

31. Officer B asked Mr X if he could remove the Taser probes, and Mr X agreed. Officer A fetched some ‘bio shield’ (treatment applied to a person to relieve the effects of pepper spray) from his patrol car, so that it could be administered to Mr X, Mr Y, and Mr Z.

⁷ For a Taser to incapacitate someone, two probes need to connect with them.

⁸ Officer A was equipped with a TX2 Taser, which contains two cartridges.

⁹ The Taser firing log shows a two second burst, whereas Officer A stated with certainty that he only pressed the arc button for one second.

32. Once Mr X had received medical attention, Officer A retrieved his Police dog from his vehicle and tracked a member of the group who had attempted to run away.
33. Mr X was received into custody at the Henderson Police Station, and then taken to Waitakere Hospital before being taken back to the Police Station.

Charges

34. Mr X was charged with resisting Police, assaulting Police, and disorderly behaviour. He received diversion on all three charges.¹⁰
35. Mr Y and Mr Z were arrested for disorderly behaviour and released with warnings.
36. Another member of the group received a formal caution for obstructing Police and was released.

Review of TOR and use of Taser

37. When an officer discharges a Taser against a person while carrying out their duties, they must complete a Tactical Options Report (TOR). This sets out their rationale for the use of force. Officer A completed his TOR on 5 February 2017.

Officer C

38. Officer C, who is Officer A's supervisor, reviewed Officer A's TOR and, as required, viewed the TaserCam footage. Officer C supported Officer A's actions, commenting that the group was intoxicated and confrontational, and that the group became increasingly threatening.
39. As required by policy, an inspector, Officer D, also reviewed Officer A's TOR and viewed the TaserCam footage. Officer D noted the particular circumstances of the incident, including the number of people present, the fact that it was dark, and that Mr X had already shown himself to have the potential to be violent.
40. Officer D concluded that Officer A *"deployed the correct tactical options"*, stating *"[t]he offenders were obviously heavily intoxicated, aggressive and refused to listen to Police directions."*

Taser Assurance Forum

41. Police's Taser Assurance Forum, based at Police National Headquarters, reviews all Taser discharges. The Forum viewed the TaserCam footage of this incident at their meeting in April 2017, and queried Officer A's decision to re-energise the Taser. The matter was then notified to the Authority under the Memorandum of Understanding between Police and the Authority.

¹⁰ In certain circumstances, Police may decide that if someone pleads guilty and does certain things, such as pay reparation, or attend a course, they will agree to withdraw the charge; this is called Police diversion.

Police investigation

42. Police subsequently carried out an employment investigation in relation to Officer A's decision to re-energise the Taser and determined that no further action was required.

THE AUTHORITY'S INVESTIGATION

43. During its investigation, the Authority interviewed Officers A, B, C and D, and reviewed the TaserCam footage and Police documentation. The Authority also attempted to contact Mr X to interview him, but he did not respond.
44. The Authority identified and considered the following issues:
- 1) Was Officer B justified in arresting Mr X?
 - 2) Were Officers A and B justified in using force?
 - a) Use of pepper spray on Mr X, Mr Y and Mr Z
 - b) Use of Taser on Mr X
 - c) Re-energising the Taser on Mr X
 - 3) Did Police ensure that appropriate medical assistance was provided to Mr X, Mr Y, and Mr Z?
 - 4) Did Officers C and D appropriately review Officer A's TOR?

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer B justified in arresting Mr X?

45. Olympic Park is in an alcohol ban area in New Lynn town centre. The alcohol ban is in effect 24 hours a day, seven days a week.
46. Officer B asked Mr X and his friends a number of times to leave the park. He advised them that it was in an alcohol ban area, and that there had been a complaint about their behaviour. Officer B also warned Mr X that he would be arrested if he did not comply. Mr X refused to leave, and instead threatened Officer B.
47. Officer B continued to warn Mr X that he would be arrested for disorderly behaviour if he did not move on. Mr X responded by swearing at Officer B and challenging him to a fight. Mr X's behaviour incited the rest of the group, and they also became increasingly aggressive. Officer B feared for his safety and arrested Mr X for disorderly behaviour.¹¹

¹¹ Section 3 of the Summary Offences Act 1981 states: "Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who, in or within view of any public place, behaves, or incites or encourages any

48. Mr X was threatening Police, and acting in a manner which indicated he intended to carry out those threats, such as by shadow boxing, and telling Officer B that he would take him on “one on one”. This occurred in a public place, and in the presence of other people who were incited to behave in the same threatening manner towards Police.
49. The Authority considers that Mr X’s behaviour was likely to trigger violence towards Officer B, and possibly Officer A. Therefore Officer B was justified in arresting Mr X for disorderly behaviour.

FINDING

Officer B was justified in arresting Mr X.

Issue 2: Were Officers A and B justified in using force?

50. Section 39 of the Crimes Act 1961 (the Crimes Act) allows Police to use such force as may be necessary to overcome any force used in resisting an arrest, unless the arrest can reasonably be made in a less violent manner.
51. Section 48 of the Crimes Act 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. Police policy provides guidance on what is considered ‘reasonable force’.¹²
52. In order to rely on a defence under section 48 of the Crimes Act, a person’s actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
 - a) What were the circumstances as the officer believed them to be? (a subjective test)
 - b) Did the officer use force for the purpose of defending himself or herself or another? (a subjective test)
 - c) Was the force used reasonable in the circumstances as the officer believed them to be? (an objective test)
53. In addition to examining the legality of the officers’ use of force, the Authority must consider whether, as a whole, it believes that their actions complied with Police policy and were reasonable in the circumstances.

person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue.”

¹² See paragraphs 103-**Error! Reference source not found.** in the appendix.

2(a) Use of pepper spray on Mr X, Mr Y and Mr Z

54. Police policy on the use of force states that pepper spray may be used against people who are exhibiting ‘actively resistant’ behaviour or worse (including assaultive behaviour and actions threatening death or grievous bodily harm).

Mr X

55. Officer B stated that he feared for his safety, and that he chose to use the pepper spray when Mr X advanced on him after being told that he was under arrest.
56. It is clear that, before Officer B used the pepper spray, Mr X was behaving in an increasingly aggressive and uncooperative manner. Officer B said that he could have pepper sprayed Mr X earlier, but his aim was to try to reason with Mr X to de-escalate the situation. However Mr X’s behaviour continued to worsen. Officer B stated that he only pepper sprayed Mr X when he became ‘assaultive’, and described Mr X’s attitude towards him as “*driven*”.¹³
57. Officer B spent time attempting to resolve the incident by communicating with Mr X, and only used force once it was obvious that Mr X was not going to comply with his instructions and Mr X advanced on him in a threatening manner.
58. The Authority is of the view that Mr X’s behaviour prevented Officer B from making the arrest in a less violent manner, and Officer B was justified in pepper spraying Mr X to effect the arrest as well as to prevent harm to himself or Officer A.

Mr Y and Mr Z

59. Officer A appears to have pepper sprayed Mr Y and Mr Z shortly after Officer B sprayed Mr X. Officers A and B both told the Authority that Mr X’s behaviour and demeanour were inciting the group.
60. In his TOR, Officer A said that Mr Y and Mr Z were “*exhibiting threatening and assaultive behaviour to us*”. He indicated that he had tried to use communication in an attempt to get them to comply with Police instructions and to de-escalate the situation, but that this was ineffective.
61. The Authority considers that Mr Y and Mr Z were assaultive, and no other lesser uses of force were available to Officer A. The Authority considers that a baton or Taser would both have been greater uses of force than pepper spray. It further considers that empty hand techniques against two members of a group would put the officers in unnecessary danger, and would not necessarily be less forceful than pepper spray.¹⁴ Therefore Officer A was justified in pepper spraying Mr Y and Mr Z in defence of himself and Officer B.

¹³ In Police policy “*assaultive*” is defined as “*showing an intent to cause harm, expressed verbally or through body language or physical action*”.

¹⁴ ‘Empty hand’ refers to a weaponless use of force, such as grabbing hold of, pushing, or manually restraining an offender.

FINDINGS

Officer B was justified in pepper spraying Mr X.

Officer A was justified in pepper spraying Mr Y and Mr Z.

2(b) Use of Taser on Mr X

62. Police policy at the time stated that:

"...a Taser is one of a number of tactical options available to you when your [assessment] ... of a situation is that the subject's behaviour is within or beyond the assaultive range or has the potential to escalate to within or beyond the assaultive range."

63. When interviewed by the Authority, Officer A described the 'assaultive' range as "words/actions expressed through body language or verbally with an intent to assault". He further said "if someone's demonstrating that they have an intent to assault or continue to assault, they are in the assaultive range, and you are justified in deploying electricity." Officer A emphasised that he is a qualified Taser instructor, and taught Taser deployment for a year, so is very familiar with how and when to use it.

64. Officer A said that during this incident, and at the time he decided to use his Taser, he feared that Mr X was about to assault him and Officer B. The following factors contributed to Officer A's assessment of the situation:

- Police had been called to the area due to a complaint that the group had threatened a member of the public;
- he and Officer B were outnumbered by the group of about seven "drunk, athletic and aggressive" people;
- the members of the group were being incited by Mr X, and Officer A had pepper sprayed two of them;
- Mr X posed the greatest threat as he seemed determined to attack Officer B; and
- Mr X had not responded to communication techniques and appeared relatively unaffected by the pepper spray.

65. Mr X threatened Officer B both verbally, and through his body language. Officers A and B both tried to calm Mr X down, and Officer A arced his Taser and verbally warned Mr X, however his behaviour escalated.

66. Mr X is a strongly built man, and the TaserCam footage confirms that he was acting in an aggressive manner: wrapping his t-shirt around his wrist, shadow boxing, and yelling abuse at the officers. When interviewed, Officer B stated that after Mr X was pepper sprayed: "he's

straight up and he tries to hook me ...” He stated that he was concerned that Mr X was *“gonna knock my head off”*.

67. As Mr X was threatening Officer B, and his behaviour was within the assaultive range, it follows that laser painting, arcing, and discharging the Taser at Mr X were all appropriate options for Officer A to use in order to defend himself and Officer B.
68. The Authority finds that it was reasonable for Officer A to respond to the threat posed by Mr X by discharging his Taser at Mr X. Officer A successfully discharging his Taser at Mr X was pivotal to the officers being able to avoid being harmed as well as to gain control of a very difficult situation.

FINDING

Officer A was justified in discharging his Taser at Mr X.

2(c) Re-energising the Taser on Mr X

69. The Authority has found that Officer A was justified in discharging the Taser at Mr X. Any further use of force must be assessed separately. Therefore Officer A’s decision to re-energise his Taser must be assessed separately in light of section 48 of the Crimes Act and Police policy.
70. After Officer A had discharged the Taser and Mr X had gone to the ground, Mr X momentarily rolled onto his right side, and then onto his back again. Officer A said he only saw Mr X roll onto his side, and believed that if Mr X got back up, he would continue in his attempts to attack Officer B. In his Police interview Officer A stated that:

“... my concern was that this person is rolling over, he’s about to stand to his feet, he’s highly assaultive um, [tactical communications] has failed, [pepper] spray has failed, laser paint has failed, arcing has failed, ah Taser is now empty. Initial cycle was effective but um, only momentarily. This person is still an imminent threat of assault to us along with his associates.”

71. In addition to the circumstances that existed when he discharged the Taser (outlined above in paragraph 64), Officer A also took into account that:
 - He had discharged both cartridges in his Taser and his pepper spray canister was empty. He was concerned about his and Officer B’s safety if the Taser wires broke, because he would be left with very few tactical options to use against Mr X; and
 - He believed that he may possibly have been able to flee from the group, but did not think Officer B would be able to get away.
72. Officer A said that he needed to keep control of Mr X, whom he still considered to be *“an assaultive risk”*, so he looked down at his Taser to locate the arc button and pressed it for one second (‘re-energising’ the Taser).

73. A Taser can deliver a maximum five-second burst of electrical current during re-energising if the arc button is held down for five seconds or longer. Although the Taser’s firing log shows that Officer A re-energised his Taser for two seconds, Officer A has said with certainty that he re-energised the Taser for one second only. The Authority has formed the view that it is probable that Officer A pushed the re-energise button for between one and two seconds, which the Taser log has recorded as two seconds. In any event, the re-energising lasted for a short period of time, and less than the maximum five seconds which could have been applied.
74. Officer A said that before he decided to re-energise the Taser, he considered ‘empty hand’ techniques or using his baton, but the Taser was “*less violent*” and “*inflicts no injury*”, so he considered it to be the appropriate tactical option.
75. Officer A also discussed the alternative of contact stunning Mr X with the Taser rather than re-energising it.¹⁵ He explained that for him to be justified in using a contact stun, Mr X would still have had to be in the assaultive range. He also pointed out that bending down to contact stun Mr X would have made him vulnerable, and that while re-energising the Taser causes Neuromuscular Incapacitation (NMI),¹⁶ a contact stun does not. Officer A emphasised that the only aftercare required for Mr X was two band-aids.
76. Officer A emphasised that when re-energising the Taser he made the “*conscious decision*” only to press the arc button for one second “*because that was all that was required ... so there was no excess[ive] force*”. Officer A said that re-energising the Taser for one second was a justified, proportionate response because other uses of force had not been successful. He referred to his handling of the situation as “*textbook*”.
77. The Authority is satisfied that Officer A believed he was acting in defence of Officer B and himself. However, it does not agree that a Taser inflicts no injury, or that it is necessarily a “*less violent*” option than others available to Officer A. Discharging or re-energising a Taser causes 50,000 volts to flow through a person’s body, causing their muscles to involuntarily contract. Although an approved tactical option for use in certain circumstances, a Taser discharge is painful, and can sometimes indirectly cause injuries, for example when someone falls over as a result of being tasered. The Authority is concerned that at the time Officer A re-energised the Taser, Mr X was lying on the ground. The immediate risk to Officers A and B therefore warrants further consideration.
78. The Authority accepts that:
- a) Officer A thought Mr X was getting to his feet again when he re-energised the Taser;
 - b) Mr X had been consistently aggressive up until that point;
 - c) after he had been pepper sprayed, Mr X was initially compliant and then quickly became aggressive again; and

¹⁵ Contact stunning means holding the Taser directly to another person and pressing the arc button. This sends an electric shock through their body.

¹⁶ NMI neuromuscular incapacitation happens as a result of the shock from a Taser. The muscles contract and the person tasered temporarily loses the ability to move.

- d) the officers had limited tactical options available to them.
79. The Authority also acknowledges the difficulty involved in making decisions in a volatile and fast moving situation. Officers A and B were significantly out-numbered, and Mr X's behaviour was inciting aggression from the other members of the group.
80. However the Tascam footage and Officer A's TOR indicate that he did not communicate with Mr X prior to pressing the arc button to re-energise through the probes. Officer A stated that he did not warn Mr X prior to re-energising the Taser because he did not think there was enough time, and previous warnings had been ineffective. The TaserCam footage shows that Officer A yelled at Mr X not to move at the same time as he re-energised the Taser.
81. The Authority is concerned that Officer A did not verbally warn Mr X to remain on the ground before re-energising the Taser probes. After using a Taser on someone, Police should provide a reasonable opportunity for that person to surrender and obey their instructions before they use further force. The Authority is of the view that Mr X was not given that opportunity.
82. Furthermore, while Mr X was lying on the ground, he was not in a position to pose an immediate threat to either Officer A or Officer B. Mr X's behaviour at that point cannot properly be described as 'assaultive', as Officer A implied when discussing his decision not to contact stun Mr X with the Taser (see paragraph 75).
83. Therefore the Authority finds that, although it was a very brief use of force, Officer A's re-energising of the Taser was not a reasonable response to the circumstances and was unjustified.

FINDING

Officer A should not have re-energised his Taser when Mr X was on the ground. Such force was unjustified.

Issue 3 Did Police ensure that appropriate medical assistance was provided to Mr X, Mr Y, and Mr Z?

84. Officer A told the Authority that he was aware of his obligations as someone who had discharged a Taser to remain with Mr X and ensure his safety.
85. Police policy recommends Police seek permission and remove probes from the person who has been tasered. It requires that anyone who has been tasered is seen by a medical professional as soon as practical, and that anyone who has been pepper sprayed receive appropriate first aid as soon as possible.
86. Once he had handcuffed Mr X, Officer B asked if Mr X wanted him to remove the Taser probes. Mr X said he did, and Officer B removed the probes and placed them in an appropriate container. Officer A retrieved 'bio shield' treatment from his car so that it could be applied to Mr X, Mr Y, and Mr Z to relieve the effects of the pepper spray.

87. The Authority is satisfied that appropriate medical assistance was provided to Mr X, Mr Y, and Mr Z.

FINDING

Police ensured that Mr X, Mr Y, and Mr Z received appropriate medical assistance for the effects of the pepper spray and Taser.

Issue 4: Did Officers C and D appropriately review Officer A's TOR?

Officer C

88. After reviewing Officer A's TOR, including viewing the TaserCam footage, Officer C concluded that he supported his actions. He stated:

"...the need for decisive action and quick deployment of available tactical options was called for to prevent an escalation of potential violence and risk to the attending Police. This was achieved by the actions taken ... with no injury to any person resulting from those tactics used".

89. When spoken to by the Authority, Officer C reiterated his view that Officer A's use of his Taser, including the re-energising, was appropriate. He explained that when he reviewed the TaserCam footage, he took account of the consistent aggression displayed by Mr X, the number of people in the group compared with the two Police officers, and that the members of that group were unpredictable due to their alcohol consumption. Officer C also noted that pepper spray had previously been used to no effect.
90. He also told the Authority that he supported Officer A's actions because he thought Officer A had made the decision to re-energise the Taser before Mr X rolled onto his back again.
91. He further explained that in his view, Mr X was still a risk, describing him as '*unpredictable*' and '*determined*'. Officer C also emphasised his view that the Taser did not cause Mr X any physical harm, except to prevent him from moving so that he could be handcuffed. Officer C referred to the Taser as "*pretty non-invasive*".
92. When speaking to the Authority, Officer C discussed the circumstances of the incident, and specifically said in relation to the re-energising that "*the risk of [Mr X] getting up and trying to achieve his purpose was very high*".
93. Although the Authority ultimately disagrees with Officer C's view that Officer A's re-energising of his Taser was justified, it accepts that Officer C followed the correct process in carrying out his review of the TOR.

Officer D

94. Officer D noted on the TOR "*I have reviewed the Taser footage for this incident and am satisfied that [Officer A] has deployed the correct tactical options ...*".

95. At interview, Officer D mentioned that at the time this incident happened, there had been a spate of quite serious dog bites and he had been encouraging Dog Section officers to use the full range of tactical options available to them, rather than just their dogs.
96. He also commented that he looks at the “*whole situation*” and, in terms of adherence to policy, the whole context of the incident needs to be taken into account. Officer D said he was fine with Officer A’s use of his Taser. He said he asked his supervisor to look at it, and the supervisor said he had no issues with it either.
97. When speaking to the Authority about Officer A re-energising his Taser, Officer D said it looked to him like Mr X was trying to get up again. When asked his view on the re-energising, Officer D said:
- “[T]he issue ... is that if he gets back up he presents a problem and I think [Officer A] actually said that he didn’t want to use his baton or cause any further injury to him so it was actually just keeping in control. I don’t think it was a compliance factor. It was actually just making sure that he didn’t present another danger.”*
98. Again, although the Authority does not agree with Officer D’s conclusion that Officer A’s re-energising of his Taser was justified, it accepts that Officer D followed the correct process in carrying out his review of the TOR.

FINDING

The Authority accepts that Officers C and D followed the correct process in carrying out their reviews of Officer A’s TOR.

CONCLUSIONS

99. The Authority found that:

- 1) Officer B was justified in arresting Mr X.
- 2) Police were justified in pepper spraying Mr X, Mr Y, and Mr Z to prevent harm to themselves, and to aid in arresting Mr X.
- 3) Officer A was justified in laser painting, arcing and discharging his Taser at Mr X.
- 4) Officer A was not justified in re-energising the Taser, as Mr X was not given an opportunity to comply with Police instructions before the Taser was re-energised.
- 5) Police ensured that appropriate medical assistance was provided to Mr X, Mr Y, and Mr Z.
- 6) The TOR supervisor and reviewer followed the correct process in carrying out their reviews of Officer A's TOR.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

22 November 2018

IPCA: 17-0052

Use of force

Legislation

100. Section 39 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.”*
101. Section 48 Crimes Act 1961 states: *“Everyone is justified in using, in the 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.”*
102. Under section 62 Crimes Act 1961, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police guidance on use of force

103. 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 options available to them to help de-escalate a situation, restrain a person, make an arrest or otherwise carry out lawful duties. These include communication, empty hand techniques (such as physical restraint holds and arm strikes), pepper spray, batons, Police dogs, Tasers and firearms.
104. Police policy provides a framework for officers to assess, reassess, manage and respond to potentially dangerous situations. This helps them to ensure their response is necessary and proportionate to the risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity, response) assessment.
105. 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 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).

106. An officer's decision about using force will largely depend on the actions of, or potential actions of, the people involved. These are categorised as:
- 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.
107. Police policy provides guidance as to what level of force by Police may be appropriate depending on the response they are faced with. Ultimately, the authority to use force is derived from the law and not from Police policy.
108. Police policy requires 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.

Taser policy

109. A Taser is one of a number of tactical options available to Police when their PCA of a situation is that the subject's behaviour is within or beyond the assaultive range or has the potential to escalate to within or beyond the assaultive range. A Taser cannot be used on a person who is passively resistant to Police.
110. When considering the use of a Taser, an officer must have an honest belief that the subject, by age, size, behaviour exhibited, apparent physical ability, threats made, or a combination of these, is capable of carrying out the threat posed (perceived cumulative assessment). Police may **only** apply a Taser to defend themselves or others, if they fear physical injury to themselves or others, and cannot reasonably use less force to protect themselves or others (section 48 Crimes Act 1961).
111. Police policy states that multiple or extended cycles of a Taser should be avoided. It also requires that every effort must be made where practicable and safe to do so, to gain control of the subject while they are incapacitated by the initial cycle of the device.

Warnings prior to deployment and discharge

112. To encourage de-escalation and to warn others nearby, Police must give a verbal warning in conjunction with the deployment of a Taser. Unless impractical or unsafe to do so give these verbal warnings. The warning when presenting a Taser is "*Taser 50,000 volts*". The warning when an officer discharges is "*Taser, Taser, Taser*". A discharge is an "*application by firing two probes over a distance from a cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing*".

Tactical Options Report

113. A Tactical Options Report (TOR) must be completed in all cases where a Taser is shown or used. The only exceptions to this requirement are:

- where the deployment was in training, or
- in the case of AOS or STG operators deployed at the time in an AOS or STG role where the deployment was presentation, laser painting or arcing (shown).

Aftercare and monitoring

114. The Police policy on Taser aftercare states that the deploying operator must ensure that the person is provided with the appropriate level of aftercare and is constantly monitored until examined by a registered medical doctor. It also states that people who have consumed alcohol or drugs are among those at greatest risk from any harmful effects of a Taser.

115. Normal first aid procedures should also be undertaken where appropriate.

116. Policy recommends that an officer remove the Taser probes with the subject's consent at the earliest opportunity.

OC spray policy

117. OC (Oleoresin Capsicum) spray, more commonly known as Pepper spray, is used by Police to subdue people. It causes a stinging sensation, and generally results in people complying with Police instructions. Police policy states that pepper spray may only be used on someone who is actively resisting the Police, and where the situation cannot be resolved by other, less forceful measures.

Warn before using

118. Before using pepper spray, unless impractical, an officer must:

- warn the person that non-compliance will result in them being sprayed;
- give the person a reasonable opportunity to comply before being sprayed; and
- warn other people nearby that a spray may be used.

Aftercare and medical attention

119. If an officer uses pepper spray, they must:

- minimise any residual effects caused by the spray by providing proper decontamination and proper aftercare;'
- ensure the person's face is not covered and they are not left lying face down with their hands constrained behind their back. This may lead to positional asphyxia, where the position of the body interferes with breathing; and
- accompany and monitor the person for at least 45 minutes or until the symptoms or effects are no longer apparent.

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?

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.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
