

Shots fired to warn fleeing driver in Huntly

OUTLINE OF EVENTS

1. On the morning of 12 November 2017, there was an armed robbery in Hamilton. A senior sergeant directed officers to arm themselves and drive towards Hamilton to look for the offenders' car. However, Police did not find the offenders.
2. That afternoon, Officers A and B were patrolling in the same car when they encountered Mr X sitting in the passenger seat of a Toyota car. Alerts on the Police database showed that Police wanted to interview Mr X, and had enough information to arrest him for a family harm incident. Before Police could handcuff him, Mr X moved into the driver's seat and fled. Police began a pursuit.
3. Officer C heard the pursuit over the Police radio and travelled to assist. He decided to arm himself with a pistol because he thought he may encounter the offenders involved in the armed robbery. He used road spikes to try to stop the Toyota as it travelled along State Highway 1.
4. In trying to avoid the road spikes and continue fleeing Police, Mr X began attempting a U-turn. Officer C was standing within 10 metres of the rear of the Toyota as Mr X began reversing towards the middle of State Highway 1 to complete the manoeuvre. Officer C fired three warning shots into the ground to make him stop. Officer A used his Police car to push the Toyota further off the road.
5. Mr X surrendered and was arrested by Officer A and another officer. Mr X resisted by gripping tightly onto his seatbelt as the officers tried to remove him from the car. Mr X was lying on the ground next to the car when Officer A kicked him in the midriff to make him release the seatbelt.
6. The Police notified the Authority of the incident, which the Authority independently investigated.

THE AUTHORITY'S INVESTIGATION

7. The Authority interviewed Officers A, B, C, the incident controller and three past supervisors of Officer C.
8. The Authority reviewed all the documentation provided by Police relating to the incident and the subsequent Police criminal and employment investigations. The Authority's investigator also drove the pursuit route.
9. The Authority identified and considered the following issues:
 - 1) Did the decision to authorise officers to carry firearms comply with Police policy?
 - 2) Were Police justified in beginning the pursuit, and did they conduct it in accordance with Police policy?
 - 3) Should Officer C have been armed when he approached the fleeing vehicle?
 - 4) Was Officer C's firing of three warning shots reasonable in the circumstances?
 - 5) Was Officer A's use of force to arrest Mr X justified?
 - a) Was Officer A justified in using his Police car to push Mr X's vehicle off the road?
 - b) Was Officer A justified in kicking Mr X in the midriff?

THE AUTHORITY'S FINDINGS

Issue 1: Did the decision to authorise officers to carry firearms comply with Police policy?

10. At about 9.20am on Sunday 12 November 2017, there was an armed robbery at a Hamilton supermarket. The three offenders had a shotgun and a pistol. Officer D, a senior sergeant working in the District Command Centre, instructed all Waikato District rural units to *"arm up ... and travel towards Hamilton and look out for this vehicle"*.¹
11. In a subsequent review of the event, Police interpreted this instruction as a general arming order. Under Police policy, only a Police officer at the level of inspector or above can authorise the routine carriage of firearms, after they consider a range of specified considerations. Under that interpretation, Officer D did not hold the appropriate rank, and therefore should not have issued the general arming order.

¹ The main focus of the District Command Centre (DCC) is to plan, deploy, and monitor the prevention activities across the District. The DCC manages all District deployable resources under the direct command of the District Commander.

12. The Authority considers that the direction Officer D gave over the radio was not a general arming order, because it was only directed at units travelling towards Hamilton to search for the car. It was, instead, an arming order for a specific incident. As a supervisor, Officer D had the power to issue such an order, and it was then the responsibility of individual officers to conduct their own risk assessment of the situation. This is the requirement set out by the 'Police firearms' policy (see paragraph 76) which also requires officers to notify the Police Communications Centre and their supervisor of their decision to arm.
13. Any individual officers who armed because of Officer D's order then had a responsibility to continue to assess the threat that gave rise to the order.² The Authority's view is that, after about an hour, it was unlikely that the offenders in the armed robbery would still have been in the vicinity. As well as individual officers reassessing the risk and disarming around this time, it would have been preferable for Officer D to tell the officers that the situation no longer required them to be armed.

FINDINGS ON ISSUE 1

The instruction to frontline staff on the morning of 12 November 2017 to arm themselves was a specific arming order and was made consistent with policy. It was then the responsibility of individual officers to continue to assess the threat and the need to remain armed.

Issue 2: Were Police justified in beginning the pursuit, and did they conduct it in accordance with Police policy?

Reason for beginning pursuit

14. In the early afternoon of 12 November 2017, Officers A and B were patrolling in the Huntly area. Officer A was driving, and Officer B was in the front passenger seat. They drove through the Z petrol station forecourt, and Officer B checked the number plate of a silver Toyota station wagon parked in front of the station shop. The Police database showed that Police wanted to interview a man connected with the owner of the Toyota and had enough information to arrest him in relation to a family harm incident. A photograph of the man in question showed a distinctive tattoo on his neck. Officer B had seen a man sitting in the passenger seat of the Toyota who had then gone into the shop. She was confident he was the same person as the one shown in the photograph.
15. Officers A and B approached the man, Mr X, who was by now sitting back in the passenger seat of the Toyota, with the door open and his feet on the ground outside the car. Officer A stood in the doorway and spoke to Mr X. Officer B was standing on the other side of the passenger door, looking through the window while Officer A spoke with Mr X.
16. When Officer A asked for his details, Mr X gave a false name. Officer A advised Mr X that he was wanted for arrest in connection with a family harm incident. After a short conversation, Officer A told Mr X he was under arrest and would need to be handcuffed. Officer A leant forward to

² 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.

grab Mr X's left wrist. At this point Mr X leant back and kicked Officer A in the thighs. He then jumped over the centre console into the driver's seat. Officer B ran to the other side of the car and attempted to take the keys from the ignition, but Mr X managed to drive away. The officers returned to their Police car and began a pursuit. Officer B advised the Police Northern Communications Centre (NorthComms) they were pursuing because Mr X was 'wanted to interview/sufficient to arrest' for a family harm incident.

17. The Police's 'Fleeing driver' policy requires officers to assess the risks involved in beginning a pursuit, and states *"the fact that a driver is fleeing does not in itself justify a fleeing driver pursuit"*. The Authority accepts that Police were justified in starting the pursuit in this case, since Mr X had been arrested and had assaulted an officer.

Turning off lights and siren near roadworks

18. Officer A told the Authority that, as they approached a narrow section of road with roadworks, he decided to turn off his lights and siren for around 400 metres. His reason was that he did not want other cars to panic or react unexpectedly to get out of the way, or to aggravate Mr X into doing something inappropriate.
19. The 'Fleeing driver' policy requires the lead driver in a pursuit to ensure warning lights and siren are activated throughout the pursuit. Technically, Officer A breached Police policy in this respect. However, the Authority finds the decision was reasonable in the circumstances because:
 - the decision was made to avoid harm to members of the public; and
 - the lights and siren were deactivated for a relatively short distance and were reactivated once the pursuit had passed the roadworks.

Use of road spikes

20. Officer C was speaking to a member of the public about a traffic matter when he heard the pursuit over the Police radio. He returned to his patrol car and advised NorthComms he was north of Ohinewai and would try to intercept the fleeing driver.
21. Officer C stopped about one kilometre north of the Ohinewai overbridge. At this point the two northbound and two southbound lanes of the road are separated by a safety barrier.
22. Officer C removed road spikes from the boot of his car and readied himself to spike the Toyota. Officer C waited for about five or ten seconds for the fleeing car to approach. He then ran back to his patrol car and radioed NorthComms to ask if it was still heading that way. He heard Officer B say they were travelling through a 70kph area in North Hampton, indicating they were not far away.
23. About five or ten seconds later, Officer C saw the lights of the patrol car approaching. Traffic was reasonably heavy, and the section of road Officer C was parked beside was a 100kph area. Officer C was wearing his high-visibility vest and directed the oncoming traffic to continue on.

24. Officer C was standing immediately behind his Police car when he saw the driver of the Toyota approaching “*at full speed*”. He threw the road spikes onto the road when the car was between 60 and 80 metres away. The spikes only deployed about half of their full length, lying across the two lanes. Officer C thought this would still be enough to stop the Toyota. Officer C told the Authority that when the car was about 20 metres away, Mr X braked suddenly and turned at a 90-degree angle to the left off the road, managing to avoid the road spikes. However, a scene diagram prepared by the Police’s Serious Crash Unit indicates that the car stopped about 50-60 metres from Officer C’s car and the spikes.
25. The Authority considers that road spikes were an appropriate tactical option in the circumstances. As required by Police policy, Officer C had obtained permission to deploy them from NorthComms.

FINDINGS ON ISSUE 2

Police were justified in beginning the pursuit.

While Officer A’s deactivation of his patrol car’s lights and siren when driving through roadworks was contrary to Police policy, it was done to protect members of the public and was therefore reasonable in the circumstances.

Officer C’s deployment of road spikes was appropriate and authorised.

Issue 3: Should Officer C have been armed when he approached the fleeing car?

26. The ‘Police firearms’ policy states that an officer may carry a firearm when their assessment of a situation is that it is in, or likely to be within, the ‘death/grievous bodily harm range’ (see paragraphs 76-79 for policy).
27. Officer C was armed on the morning of 12 November 2017 due to Officer D’s instruction to all Waikato District rural units to “*arm up*” following the armed robbery earlier in the day (see paragraph 10). When he was called away from looking for the vehicle involved in the armed robbery to attend a car crash, Officer C did not disarm. Shortly after 12pm, when he had returned to Huntly Police Station and was completing paperwork, his supervisor queried why he was armed. Officer C told his supervisor that he would secure his firearm after he had finished the paperwork he was working on. He still did not disarm at the Police station and it was only while out responding to another job that Officer C returned his pistol to the lock box in his patrol car.
28. After Officer C had prepared to spike the Toyota, he remembered the armed robbery earlier that day, and thought “*I’d better arm myself, because I’m a fixed target*”. He later told the Authority it is quite common for fleeing drivers leaving Hamilton to travel north through Huntly, and he thought there was a risk the offenders from the armed robbery would drive directly past him. Officer C therefore removed his Glock pistol from the lock box in his patrol car, readied it for firing and put it in his holster.³

³ Officer C had current tactical training certifications, including firearms, at the time of the incident.

29. Officer B's radio transmission explaining the reason for the pursuit was that the driver was wanted in relation to a family harm incident. Officer B also provided a description of the fleeing car, which was different from the description given over the Police radio of the car involved in the armed robbery that morning. Officer B did not mention the armed robbery or suggest that the fleeing driver was armed. The Authority also notes that at the time Officer C was preparing to spike the Toyota, approximately six hours had passed since the armed robbery.
30. The Authority acknowledges that the radio transmissions from NorthComms were difficult to hear. However, Officer C was receiving and acting on radio updates from Officer B regarding the pursuit. Even if he did not hear Officer B's transmission with the reason for pursuit, Officer C contacted NorthComms on several occasions while the pursuit was happening, including when requesting permission to deploy spikes. Therefore, he had the opportunity to ask for clarification from Officer B or NorthComms on whether the pursuit related to the armed robbery. Moreover, even if he experienced radio difficulties that limited his ability to make that inquiry, his belief that a car from an armed robbery might be travelling on that road and fleeing from Police six hours later was speculative and unfounded. His risk assessment of the situation, and decision to arm himself, were not therefore reasonable in the circumstances.
31. Officer C also did not advise NorthComms or his supervisor of his decision to arm. Police policy required him to do so and he had enough time to at least advise NorthComms, given he radioed them to find out if the pursuit was still heading in his direction.
32. Although Officer C decided to arm, he said he did not have time to put on his ballistic body armour.⁴ While ballistic body armour is stored in the boot of Police cars which can make it more time-consuming to access, in this instance Officer C had to retrieve the spikes from the boot. He therefore could have put on his body armour in minimal time. His failure to wear the body armour was a breach of Police policy.

FINDINGS ON ISSUE 3

Officer C's decision to arm himself was not reasonable in the circumstances.

When Officer C decided to arm, he should have notified NorthComms and put on his ballistic body armour.

Issue 4: Was Officer C's firing of three warning shots reasonable in the circumstances?

33. When Mr X braked suddenly and turned left off the road at a 90-degree angle to avoid the road spikes, Officer C thought he was surrendering. He pulled the road spikes in to prevent any other cars from being spiked and ran along the side of State Highway 1 towards the rear of the Toyota. Officer C later explained that he thought the pursuing officers may need assistance.
34. Officer C said he did not want to run towards the front of the Toyota because he was concerned Mr X might have a gun. As the Authority has already established, this belief was unfounded.

⁴ Police policy requires officers to wear ballistic body armour – in this case, hard armour plating (HAP) over their standard issue Stab Resistant Body Armour (SRBA) – which provides additional protection of vital organs during incidents involving firearms.

Officer C said he did not know where the other Police car was at this stage. While he was running he yelled into his Police radio “*block ‘em block ‘em*”, meaning that Officers A and B should block the fleeing car with their patrol car.

35. When Officer C reached the Toyota, he stood near the right tail lights because he thought if Mr X was armed it would be harder for Mr X to aim at him. Officer A recalled that Officer C was standing about 10 metres behind the back of the Toyota, but Officer C’s recollection is that he was immediately behind it. The Police Scene Examination report stated that the spent bullet casings located after the event suggested that he was “*only metres*” away. Officer C said he could not go any further back without standing in the middle of the road, and he still could not see any other Police cars. He yelled “*get out of the car*” at Mr X. At this point he heard the revving of the Toyota’s engine, and saw the wheels spinning backwards and the car reversing towards him. Officer C yelled “*stop stop stop*” but there was no indication Mr X was going to stop. Officer C drew his pistol from his holster, aimed at the soil on the right side of the car and fired three times into the ground near the car’s right rear tyre. He said he was aiming at a 45-degree angle, and at a point about half a metre away from the fleeing car.
36. Officer C told the Authority he was concerned that, if Mr X had been able to complete his turn, he would have attempted to flee south in the northbound lanes (because a median barrier prevented him turning onto the correct side of the road). Officer A also believed this would happen. Officer C said he feared for his life and the lives of other motorists:

“I think he’s gonna run me over and also shoot back to State Highway 1... and they... definitely can cause some fatal or serious crash and that’s why I pulled my gun out.”
37. After Officer C fired the three warning shots, Mr X stopped the car and put his arms straight up in the air through the car’s sunroof until other officers pulled him from the car and arrested him.
38. The Police ‘Firearms policy’ states that, as a general rule, warning shots should not be fired. However, it notes there may be circumstances in which warning shots are appropriate. For example, when someone has been asked to surrender and has not done so, and the warning shot can be clearly aimed “*as a warning shot*”. The policy notes that officers firing warning shots should take extreme caution to safeguard the safety of others.
39. Given that Officer C genuinely, albeit unreasonably, believed that Mr X was armed, Officer C placed himself in danger by running approximately 50 metres from his car to where he stopped behind the Toyota. He should have known from his radio communications that at least Officers A and B would arrive very soon, and so could have waited for them to arrive to block Mr X from heading south in the northbound lane and to assist with arresting Mr X.
40. Therefore, the Authority believes that Officer C unnecessarily placed himself in a position where he felt he had to fire warning shots to stop the fleeing Toyota.

41. Officer C told the Authority that he did consider other tactical options, including pepper spray, taser and baton. The Authority considers that even once he had placed himself in the position behind the vehicle, Officer C could have avoided the immediate threat the Toyota posed to him by jumping clear of the slow-moving reversing vehicle.
42. While the warning shots were effective in stopping Mr X in this instance, they constituted an unreasonable and unnecessary use of a firearm because there were alternative, less dangerous options available to effect the arrest of Mr X.

FINDING ON ISSUE 4

It was not reasonable for Officer C to fire three warning shots.

Issue 5: Was Officer A's use of force to arrest Mr X justified?

5(a) Was Officer A justified in using his car to push Mr X's vehicle off the road?

43. Meanwhile, Officers A and B saw that Mr X was trying to turn back onto the road heading south. Officer A said the reverse lights of the fleeing car were on, three of the tyres were on the grass verge and the back-left tyre was on the gravel and spinning, making Officer A think Mr X was trying to get away. Officer A observed that when Mr X was trying to reverse the car he had no traction because only the back-left tyre was on the gravel.
44. Officer A told the Authority that he was planning to use his vehicle to block the Toyota from gaining access to the highway again, but that it began to gain traction again and slowly edge forward as he approached it. He said that he therefore was not able to block it from the front without reversing. He felt that his only option was to nudge it from the rear and push it off the road so Mr X could not head south in the northbound lane and potentially cause a fatal crash.⁵
45. After Officer A saw Officer C firing the three warning shots, he slowed right down and yelled at Officer C words to the effect of "stop" or "get away". He then used the front-left corner of his patrol car to push the back-left corner of the fleeing car. This moved it further off the road onto the grass verge where the car could not gain traction.
46. 'Nudging' an offender's vehicle in such a manner is not an approved tactic in Police policy. However, section 40(1) of the Crimes Act 1961 allowed Officer A to use such force as may be necessary to prevent the escape of Mr X during or after his arrest, unless his escape could have been prevented by reasonable means in a less violent manner. Police policy states that the use of any force must be considered, timely, proportionate and appropriate given the circumstances known at the time.
47. The event occurred on the side of State Highway 1 in a 100kph zone. If Mr X had been able to complete his U-turn and had driven into oncoming traffic on the wrong side of the highway, the risk that members of the public could be harmed or killed by his car was significant. Both the Police car and Mr X's car were travelling at very slow speeds, which meant that the risk associated with nudging the car was low. Because of these two factors, the Authority considers

⁵ Mr X would have to drive in the northbound lanes due to the safety barrier in the middle of the road.

that in this instance Officer A's decision to push the Toyota off the road was reasonable and justified by section 40(1).

5(b) Was Officer A justified in kicking Mr X in the midriff?

48. Mr X put his hands in the air to surrender after Officer C had fired the warning shots and Officer A had pushed his vehicle. Officers A and B got out of their patrol car and ran to the Toyota. Officer B drew her Taser and ran to the passenger's side, while Officer A presented pepper spray and went to the driver's side. Officer A directed Mr X to get out of the car and told him he was under arrest. Mr X was saying "I'm sorry I'm sorry" but did not get out of the car. Officer A attempted to remove him from the car, but Mr X grabbed the seatbelt and refused to let go.
49. Officer A unclipped Mr X's seatbelt and tried to grab him around the neck area to "try and roll him out of the car". Another Police officer then arrived and together they pulled Mr X from the car onto the ground face down. Mr X was still holding onto the seatbelt. Officer A said he told Mr X to let go of the seatbelt more than once, and he tried to release Mr X's grip but could not. Officer A later told the Authority that, because he needed to handcuff Mr X, he felt he had to kick him in the midriff to make him let go. He said he only kicked Mr X once and the kick "wouldn't have hurt him too much but it was enough for him to sort of reflex and let go". After the kick, Mr X released the seatbelt and the officers handcuffed him.
50. Section 39 of the Crimes Act 1961 provides for officers to use reasonable force to overcome resistance when arresting someone, unless the arrest can be carried out "by reasonable means in a less violent manner". Police policy states that the use of any force must be considered, timely, proportionate and appropriate given the circumstances known at the time.
51. The Authority acknowledges that:
 - a) the arrest followed a pursuit in which Mr X had tried to evade Police;
 - b) the officers were trying to arrest Mr X beside a busy highway; and
 - c) Officer A was keen to effect the arrest as quickly as possible and prevent Mr X from escaping from Police a second time.
52. At the time Officer A kicked Mr X, Mr X was lying on the ground refusing to let go of a seatbelt. Officer A and another officer were physically holding him and there were at least two other officers nearby. He therefore posed minimal threat.
53. There were other less forceful tactical options available to Officer A, including a technique taught in Police training called the 'bottle top', the use of a leg strike to Mr X's lower leg or asking one of the other officers present to cut the seatbelt.⁶ Two Police trainers who reviewed Officer

⁶ A 'bottle top' is a pain compliance technique used by Police to restrain someone. When a handcuff is secured on a person's wrist, the handcuff can be twisted backwards or forwards which digs the handcuff into the underside of the arm and into the wrist bone. It can then be twisted, putting leverage onto the wrist and causing the person to bend over, enabling them to be pulled to the ground.

A's use of force noted that a leg strike to the midriff is only appropriate in circumstances where there is a risk of death or grievous bodily harm.

54. The Authority accepts that a degree of force was required to make Mr X let go of the seatbelt, so his arrest could be effected. However, it finds that the force used by Officer A was excessive in the circumstances.

FINDINGS ON ISSUE 5

Officer A's use of his patrol car to push the fleeing car off the road was reasonable in the circumstances. A degree of force was required in effecting the arrest of Mr X, but Officer A was not justified in kicking him in the midriff.

SUBSEQUENT POLICE ACTION

55. Police investigated Officer C's firing of the warning shots. They found that Officer C was not liable for any offence under the Arms Act 1983 or under the Crimes Act 1961. They also found that Officer C's decision to fire warning shots complied with Police policy.
56. This incident was also the subject of a District Policy, Practice & Procedure Review which made several findings and recommendations, including that:
- District Command Centre staff should be familiar with Police policy on the temporary general arming of staff (as raised in paragraph 12, the Authority does not believe that the direction to arm was a general one); and
 - with respect to Officer C's decision to arm:
"Upon reflecting on incidents such as this, the actual response by officers involved does not seem consistent with what might (objectively) be expected had TENR [the Police's risk assessment process] been applied appropriately."
57. Police have since provided Officer C additional training on situational awareness, tactical options information gathering and decision making.

CONCLUSIONS

58. The Authority has found that Officer C's decision to fire three warning shots was not reasonable in the circumstances. Officer C unnecessarily placed himself in a position where he felt that he had to fire the shots to stop the fleeing Toyota.
59. The Authority also concluded that:
- 1) Officer A's use of his patrol car to push the fleeing car off the road was reasonable in the circumstances;
 - 2) Officer A was not justified in kicking Mr X in the midriff;

- 3) the instruction to frontline staff on the morning of 12 November 2017 to arm themselves was a specific arming order and was made consistent with policy. It was then the responsibility of individual officers to continue to assess the threat and the need to remain armed;
- 4) Police were justified in beginning the pursuit;
- 5) while Officer A's deactivation of his patrol car's lights and siren when driving through roadworks was contrary to Police policy, it was done to protect members of the public and was therefore appropriate in the circumstances;
- 6) Officer C's deployment of road spikes was appropriate and authorised;
- 7) Officer C's decision to arm himself was not reasonable in the circumstances; and
- 8) when Officer C decided to arm he should have notified NorthComms and put on his ballistic body armour.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

23 July 2019

IPCA: 17-1039

Legislative authority for pursuits

60. Under section 114 of the Land Transport Act 1998, the Police are empowered to stop vehicles for traffic enforcement purposes.
61. Under section 121 of the Search and Surveillance Act 2012, the Police are empowered to stop a vehicle to conduct a search pursuant to a warrant or a warrantless power. They may also stop a vehicle without a warrant under section 9 of that Act to arrest a person when they have reasonable grounds to suspect that a person is unlawfully at large or has committed an offence punishable by imprisonment, and reasonable grounds to believe that the person is in or on the vehicle. Where such a vehicle fails to stop, the Police may begin a pursuit.

'Fleeing driver' policy

62. The decision to commence, continue, or abandon a fleeing driver pursuit must be continually assessed and reassessed in accordance with the Police's TENR (Threat-Exposure-Necessity-Response) risk assessment tool. The overriding principle of the 'Fleeing driver' policy is that: *"Public and staff safety takes precedence over the immediate apprehension of the offender"*.
63. During a pursuit, warning lights and siren must always be simultaneously activated. The Communications Centre must also be advised immediately if there is a fleeing driver and Police have started a pursuit.
64. The pursuing staff member who is responsible for undertaking radio communications should provide the pursuit controller with timely and consistent situation reports (when it is safe to do so). Where additional information is required or yet to be transmitted, the dispatcher or pursuit controller should prompt for the required details. The lead vehicle driver must also comply with all directions from the pursuit controller.
65. As part of a flexible response model, all suitable tactical options should be considered, or requested, to safely apprehend the fleeing driver. This may include not pursuing or abandonment.

'Tyre deflation devices' (road spikes) policy

66. Road spikes are often used as a tactical option to stop fleeing vehicles in the safest possible manner, with the minimum force necessary. Police policy provides that they can be used where no other, less dangerous, means of stopping the vehicle are reasonably available, where they can be used without unjustified risk to any person and on the authority of the Pursuit Controller.⁷

⁷ The pursuit controller is the shift commander at the Police Communications Centre, here NorthComms.

Law on use of force

67. 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.”*
68. Section 40 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in preventing the escape of a person after their arrest. Specifically, it provides that officers may use *“such force as may be necessary”* to prevent the escape of a person unless the escape *“can be prevented by reasonable means in a less violent manner.”*
69. 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 or she believes them to be, it is reasonable to use.”*
70. 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 use of force

71. 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.
72. 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.
73. 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).

74. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
75. 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.

'Police firearms' policy

76. The 'Police firearms' policy provides guidance to Police officers about the use of firearms. It states that from time to time a Police officer at the level of inspector or above can authorise routine carriage of firearms with the following considerations:
- based on an assessment of a specific risk or coordinated pre-planned operation;
 - must be for a specific time frame;
 - continuously reviewed to ensure the threat still exists;
 - communicated to all staff in the operating environment including oncoming shifts;
 - must advise District Commander, District Command Centre and Comms; and
 - must specify roles and conditions of carriage specific to the threat.
77. In addition to general arming orders above, the policy states that an officer may carry firearms when their perceived cumulative assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the Tactical Options Framework. When this occurs, the officer must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable.
78. When an officer deploys to an incident where they believe firearms are or could be present they must wear ballistic body armour.
79. Warning shots should not generally be fired. However, Police policy states that there may be circumstances where a warning shot may be appropriate, such as when a suspect has been asked to surrender and has not done so, and it can be clearly aimed as a warning shot.

ABOUT THE AUTHORITY

Who is the Independent Police Conduct Authority?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

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



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