

## Man tasered twice following disorder in Picton

### OUTLINE OF EVENTS

1. Over the weekend of 16 June 2018, the occupants of a house on Devon Street in Picton had a party. There was an altercation involving about 30 partygoers, believed to be gang associates and a group of out-of-town forestry workers, including Mr X. Officer A was one of the officers who attended the incident, and Police made several arrests.
2. At about midnight on Friday 22 June 2018, Officers A and B were on patrol in Picton when they came across Mr X and four male friends causing a disturbance at the same house.
3. Officers A and B directed the group to disperse but they failed to do so. On the street outside the address Mr X began 'shadow boxing' and running between Officers A and B. Officer A said he believed Mr X would assault him, Officer B, or the occupants of the address. He tasered Mr X twice.
4. Officer B subsequently handcuffed Mr X and placed him in the patrol car. The rest of the group dispersed from the scene. Mr X was taken to Blenheim Police Station and charged with Disorderly Behaviour (Likely to Cause Violence). He was later convicted and discharged.

### POLICE INVESTIGATION

5. The Tasman District Response Manager and Area Commander reviewed Officer A's Tactical Options Report (TOR) and Taser camera footage and found no issue with his actions.<sup>1</sup> The footage was subsequently reviewed by the Police National Headquarters' Taser Assurance Forum. The forum referred the matter back to District to reconsider their decision, due to concerns that Mr X's actions did not meet the threshold of 'assaultive'.<sup>2</sup>
6. After reviewing the footage again, the Tasman District managers concluded that the Taser use was justified. They did not investigate Officer A's use of the Taser but determined the incident provided a training opportunity for wider district staff.

<sup>1</sup> An officer is required to complete a TOR when he or she has used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

<sup>2</sup> 'Assaultive' is defined as "intent to cause harm, expressed verbally and/or through body language and/or physical action."

7. Notwithstanding, Police notified the Independent Police Conduct Authority of the incident and the Authority conducted an independent investigation into Officer A's use of the Taser. This report sets out the results of that investigation and the Authority's findings.

## THE AUTHORITY'S INVESTIGATION

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8. The Authority interviewed Officers A and B, and the female occupant at the Devon Street address, Ms Y. It reviewed Police documentation of the incident and viewed the Taser camera footage that showed Mr X being tasered.
9. Despite the Authority arranging an interview with Mr X, he did not make himself available. He made it known to the Authority that he did not wish to be interviewed or become involved in the investigation at all.
10. The Authority identified and considered the following issues:
  - 1) Was Officer A's first use of the Taser justified?
  - 2) Was Officer A's second use of the Taser justified?

## THE AUTHORITY'S FINDINGS

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### Issue 1: Was Officer A's first use of the Taser justified?

11. At about midnight on 22 June 2018, Officers A and B were on night shift patrol in Picton. As they drove near Devon Street, they noticed a commotion at the same address Officer A had attended the week before.
12. Officers A and B observed a group of men near the front door of the address, and another looking through a window. One of the men was Mr X. They were arguing with a female occupant, Ms Y, who stood at the open front door, yelling at the men.
13. Ms Y said the men had been banging on her door and threatening her. She said she was "scared" and it was "lucky" Police arrived.
14. Officers A and B pulled up outside the address and flashed their blue and red lights. Seeing this, the men jumped over the property's fence and stepped out into the road. Officers A and B exited the patrol car.
15. Officer A did not initially perceive the men to be a threat and directed them to disperse. However, he said the group became "*obstructive and abusive*" and refused to leave the area.
16. Officer A said he and Officer B were outnumbered by five "*heavily intoxicated*" men who were "*closing ranks and moving towards us*" in a threatening manner. Officer B also said the men were surrounding them and told the Authority he believed the men were "*quite capable*" of assaulting them.

17. Mr X moved away from his friends and into the middle of the road. Officer B said he began *“jumping around like a boxer”* approximately 10 to 15 metres away from them. He also said Officer A attempted to communicate with Mr X but this did not deter him.
18. Officer A said he was confronted by five *“unknown and unpredictable”* men. He became fearful for his and Officer B’s safety, and that of the occupants at the address. Officer A believed he was at risk of being assaulted by Mr X. He subsequently tasered Mr X twice.
19. Officer A stated in his TOR that he tasered Mr X to defend himself, Officer B, and the occupants at the Devon Street address, in accordance with section 48 of the Crimes Act 1961.<sup>3</sup> In order to rely on this justification for his use of force, Officer A’s actions must be assessed based on the following three questions:
  - 1) What did Officer A believe the circumstances to be at the time he tasered Mr X?
  - 2) In light of that belief, was Officer A’s use of the taser for the purpose of defending himself (and/or others)?
  - 3) If it was, was the force used reasonable in the circumstances as Officer A believed them to be?

*What did Officer A believe the circumstances to be at the time he tasered Mr X?*

20. Officer A said he needed to intervene because he believed the men would return to the house if Police left without taking action.
21. Officer A’s initial attempts to communicate with Mr X failed and Mr X’s behaviour was *“erratic”*, so he removed his Taser from his holster and presented it at Mr X. Officer A did not give Mr X a verbal warning but said he continued to communicate with Mr X to keep his attention focused on him. However, Mr X ignored him so he switched his Taser on, aimed it at Mr X again, and began ‘laser painting’ him.<sup>4</sup>
22. Officer A said Mr X then began *“moving in a boxer-like manner making short punching moves”*, which led him to believe Mr X was intent on assaulting him. He said Mr X ran towards and past him, then turned around and ran towards and past him again, before side stepping towards him and slipping over, reducing the distance between them to one metre. Officer A said that, as Mr X started to get back up, he tasered him in the back because he was concerned Mr X would assault him if he got back onto his feet.
23. Officer A’s account is supported by others. Ms Y told the Authority that, when Police arrived, most of the men *“scattered”* (10 to 50 metres away from the officers in different directions) but that Mr X was *“running around...boxing”* and not listening to Police. She said Mr X was *“aggravated”* and *“angry”* and believed he had the potential to assault Police. Officer B said Mr X was *“obviously shaping up for something...”*

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<sup>3</sup> See paragraph 45.

<sup>4</sup> Police policy describes ‘laser painting’ as overlaying the laser sighting system on a subject, as a visual deterrent, in conjunction with a verbal warning.

24. The Taser camera footage is also broadly consistent with Officer A's account. It shows Mr X in the middle of the street, facing Officer A, while 'shadow boxing'.<sup>5</sup> He appears to be goading Police and can be heard to say, "come on, chase me".<sup>6</sup> The footage shows Mr X running about 10 metres along the street, in between Officers A and B, who are standing approximately 10 metres apart.<sup>7</sup> Mr X then turns around to run back past the officers for a second time but trips over and falls to the ground. Mr X starts to get up in a forward motion as if he intends to keep running forward.
25. The Authority is therefore satisfied that Officer A believed that Mr X was assaultive, because he was at risk of causing harm to Police or other people in the vicinity by 'shadow boxing', verbally goading Police, and running past them in close proximity.

*In light of that belief, was Officer A's use of the taser for the purpose of defending himself and others?*

26. Officer A told the Authority he tasered Mr X in defence of himself, Officer B, and the occupants of the address. Based on Officer A's threat assessment (set out above), the Authority has concluded that Officer A believed that he needed to intervene and in doing so was acting for the purpose of defending himself and others when he first discharged the Taser.

*Was the force used reasonable in the circumstances as Officer A believed them to be?*

27. Officer A believed that the Taser was the only realistic option available to him to neutralise this threat. His view in this respect was supported by Officer B, who said that Officer A's Taser deployment was the most "direct" and "efficient" way to deal with a situation that was "touch and go...".
28. Officer A said he considered using pepper spray on Mr X but believed it was inappropriate to do so, as Officer B and the other men were nearby and there was a risk of cross-contamination. He said he was also concerned that, had he approached Mr X directly to arrest him, Mr X would have resisted and they would end up in a fight (outnumbered five to two). He said he was not prepared to get involved in a "grappling situation" with a group of aggressive men. Furthermore, the option to await back-up was not viable, as the nearest patrol is in Blenheim, a 15-minute drive away.
29. The Authority is therefore satisfied that Mr X's behaviour reached the threshold to deploy a Taser and Officer A's first use of the Taser was accordingly justified in the circumstances.
30. However, the Authority notes that Officer A did not give Mr X a warning that he could be tasered, and thereby an opportunity to desist. To comply with Police policy, Officer A should have done so.<sup>8</sup>

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<sup>5</sup> Sparring with an imaginary opponent.

<sup>6</sup> None of the other men are visible on the Taser footage as Mr X ran up and down the street, indicating they were behind Officer A.

<sup>7</sup> Police's Taser expert determined from the Taser footage that Mr X was 5.4 to 6.3 metres away from Officer A.

<sup>8</sup> See paragraph 54 for relevant Police policy.

## FINDING ON ISSUE 1

Officer A's first use of the Taser was justified in the circumstances.

### Issue 2: Was Officer A's second use of the Taser justified?

31. Officer A believed the first use of the Taser had little or no effect on Mr X as the probes were close together and failed to create a charge (due to the close proximity in which he fired it). Therefore, he tasered Mr X again; 8 seconds later. As with his first use of the Taser, Officer A said he did this to defend himself and others (in accordance with section 48 of the Crimes Act).

#### *What did Officer A believe the circumstances to be at the time he tasered Mr X for the second time?*

32. Officer A said Mr X was already agitated and in an aggressive mood. He had told Mr X to "stay down" after the first Taser use, to which Mr X responded, "fuck that". This led him to believe Mr X did not intend to be compliant.
33. Officer A said Mr X, while still on the ground, raised his hands above his head and then back down to his sides, which Officer A said he believed to be an attempt to get back onto his feet. He said, "had he stayed [down] and been compliant the first time... I wouldn't have had to discharge the second Taser." Officer A also said he believed Mr X would have assaulted him, had he got back up. For this reason, he tasered him a second time.
34. The Taser camera footage shows Mr X lying on his back on the ground after being tasered the first time, and Officer A can be heard yelling at him to "stay down". Seconds after the conclusion of the first taser cycle,<sup>9</sup> Mr X moves his arms above his head and then down again to his side. Officer A then tasers him a second time.
35. One of the other men can be heard on the footage, protesting the force used on Mr X. He said "Officer, he's down on the ground just leave him", to which Officer A responded by shouting "stay away...[You] want to come and cause problems, this is what happens".
36. Having viewed the Taser footage, the Authority does not consider that Mr X was attempting to get back onto his feet or that he was, or was about to become, assaultive. Notwithstanding this, the Authority accepts that Officer A felt vulnerable with Mr X on the ground near him and perceived that Mr X continued to pose a threat to his safety.

#### *In light of his belief, was Officer A's use of the taser for the purpose of defending himself and others?*

37. Officer A told the Authority he tasered Mr X for the second time for the purpose of defending himself. In the light of Officer A's perception of the circumstances, the Authority accepts that this was his purpose.

#### *Was the force used reasonable in the circumstances as Officer A believed them to be?*

38. Although the Authority accepts that Officer A perceived Mr X to continue posing a threat to his safety, it does not accept that Mr X presented the same degree of risk once he was lying on his

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<sup>9</sup> A Taser cycle is five seconds.

back on the ground, having already been tasered. Officer A should have taken the time to re-assess the situation after the first firing of his Taser and considered whether a less forceful tactical option was available to control Mr X once he was on the ground. For example, he could have waited to see if Officer B could restrain and handcuff him,<sup>10</sup> or attempted to do so himself.

39. Accordingly, the Authority finds that Officer A's second use of the Taser against Mr X was a disproportionate and unreasonable use of force to defend himself and Officer B, and therefore was not justified under section 48 of the Crimes Act.

*Was there any other justification for the use of the Taser?*

40. Section 39 of the Crimes Act empowers an officer to use such force as is necessary to overcome any resistance to an arrest unless it can be effective by reasonable means in a less violent manner (see paragraph 43).
41. For the reasons set out in paragraph 37, the Authority is satisfied that Officer A cannot rely upon section 39 to justify the second use of the Taser.

**FINDING ON ISSUE 2**

Officer A's second use of the Taser was a disproportionate and unreasonable response to the circumstances as he perceived them to be.

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<sup>10</sup> Officer B subsequently restrained Mr X and applied handcuffs after the second Taser.

## CONCLUSION

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42. The Authority has found that Officer A's first Taser deployment was for the purpose of defending himself and officer B. Officer A reasonably believed Mr X's behaviour was 'assaultive' and he, Officer B and the occupants of the Devon Street address were at risk of harm. His first Taser deployment was justified.
43. Officer A's second use of the Taser against Mr X was not proportionate to the threat he perceived. Mr X was lying on the ground, having already been tasered. Therefore, his second use of the Taser was unjustified.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

12 September 2019

**IPCA: 18-0762**

### Law

44. 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.”*
45. Section 48 of the 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.”*
46. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### Use of Force policy

47. The Police’s ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
48. 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.
49. 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).
50. 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.

51. 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.

### Taser policy

52. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person whose behaviour is within or beyond the assaultive range or has the potential to escalate to within or beyond the assaultive range.
53. Assaultive is defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”*.
54. ‘Presentation’ of a Taser means to draw the device and present it at a subject as a visual deterrent. Presentation must be in conjunction with a verbal warning.
55. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser unless impractical to do so. The warning relevant to the presentation of a Taser is *“Taser”*. The warning relevant to a discharge or contact stun is *“Taser, Taser, Taser”*.
56. 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, in conjunction with a verbal warning”*.
57. Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable.

### 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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