

Police use of a firearm in the Coromandel

OUTLINE OF EVENTS

1. On 28 August 2017 Police were advised that a firearm and a silver Holden Commodore car had been stolen in two separate incidents in the Coromandel area. Two local officers, Officers A and B, concluded the incidents were probably related and decided to arm themselves with Glock pistols in case they encountered the offenders, Mr X and Ms Y.
2. That evening Officer A located Mr X, driving a black Subaru Impreza, and Ms Y, driving the silver Holden, along a rural state highway. When Officer A signalled for the drivers to stop, only Ms Y complied.
3. While Officer A was arresting Ms Y, Mr X in the Subaru rammed the Police car's open door, driving towards Officer A and then reversing towards him repeatedly. In response, the officer shot at Mr X in the Subaru. A nearby resident videoed the incident and, while only the vehicles' lights can be seen in the darkness, the audio recording indicates the officer fired his pistol 21 times (including 4 shots after reloading the pistol). No one was injured during the incident. Mr X and Ms Y left the scene in the Subaru.
4. Officer B arrived a short time later, but then left to look for Mr X and Ms Y while Officer A remained at the scene alone. Officer B soon returned and then the shift sergeant and more officers arrived to take possession of Officer A's pistol and examine the scene.
5. Mr X and Ms Y were subsequently arrested and charged with a number of offences. Mr X pleaded guilty and was sentenced in relation to several of the charges, including aggravated assault, unlawfully taking a motor vehicle and burglary. Ms Y also pleaded guilty and was sentenced in relation to several charges, including unlawfully taking a motor vehicle and burglary.

6. Police investigated Officer A's use of his pistol. Police also notified the Authority of this incident, which the Authority independently investigated.

Police investigation

Scene and vehicle examinations

7. Police found 19 shell casings at the scene, and another was located in Officer A's clothing. Based on the location of the shell casings, and the bullet hole trajectories, the scene examiner determined that Officer A fired from at least three locations.
8. The Subaru was found abandoned the day after the shooting. Police also found the stolen firearm a short distance away.
9. The Subaru had fourteen holes in its rear and side panels which appear to be bullet holes. The rear windscreen was shattered with most of the glass missing. The Police expert considered it likely that at least one bullet caused the shattered glass. He could not rule out the possibility that further bullets went through the hole where the glass had been.
10. There was also one bullet hole in the front of the Subaru, as well as damage to the front bumper and fog light.¹ Another bullet hole was located in the open driver's door of Officer A's Police car.

Findings of Police investigation and Policy, Practice, and Procedure review

11. The Police criminal investigation concluded that Officer A was legally justified in firing his gun in the circumstances.
12. Police also carried out a Policy, Practice, and Procedure review, which highlighted a lack of consistency in post-shooting procedures. It noted the risk to Officer A in remaining at the scene, and pointed out that timelier and more effective incident control and oversight could have avoided that situation. Police should have sent more investigative staff to assist, and escalated the matter to the Area Investigations Manager to ensure that enough officers were dispatched to the scene.

THE AUTHORITY'S INVESTIGATION

13. The Authority interviewed Officer A and Ms Y. Mr X met with the Authority's investigator but declined to speak about the incident.² The Authority also reviewed Police documentation, including a scene report, and an Authority investigator conducted a site visit of the area where the shooting took place.
14. The Authority identified and considered the following issues:
 - 1) Did Officer A comply with Police policy when arming himself with a pistol?

¹ It seems likely that the damage to the front bumper was caused by the Subaru ramming Officer A's Police car.

² The Authority is empowered to summon people under section 24 of the Independent Police Conduct Authority Act 1988, but did not consider it necessary to summon Mr X to provide information in this case.

- 2) Was Officer A justified in firing his pistol on each occasion when Mr X drove at him?
- 3) Did Police carry out appropriate post-incident procedures?

THE AUTHORITY'S FINDINGS

Issue 1: Did Officer A comply with Police policy when arming himself with a pistol?

15. On 28 August 2017 Officer A started his shift at 3pm, covering his and a neighbouring station. He checked the Police intelligence network to update himself on recent Police events within the area, and noted the theft of a firearm from a house earlier that day. The record stated the firearm may not be in working order.
16. Officer A then went out of cellphone and radio coverage to attend to a routine matter. After he returned to an area with coverage, at about 7.30pm, he heard on the Police radio that a car had been stolen from a house close to where the firearm had been stolen. Officer A drove north to assist Officer B, who was also aware of the earlier theft.
17. Officers A and B met at an intersection off the state highway, where they discussed the two incidents and their likely connection. Due to the risk they would encounter an offender with the stolen firearm, Officers A and B armed themselves with Glock pistols and, as required by Police policy, discussed the Police 'fire orders'.³
18. Officers A and B were already wearing their standard Police stab resistant body armour, but did not put on ballistic body armour. Officer A had with him pepper spray, Taser, handcuffs, radio, and baton, as well as an Officer Safety Alarm.⁴
19. Officer A stayed at the intersection for about an hour, while Officer B drove to the address where the car had been stolen.
20. Officer B informed Officer A of the identity of the offenders involved (Mr X and Ms Y), and Officer A looked up their details in the Police database. Officers A and B were conscious that the burglars may have a Police scanner; therefore, they spoke via cellphone.⁵
21. The Police database had very little information about Ms Y, but there was a photograph of her. Mr X had multiple alerts for use of force, violence, assaulting Police, gang connections, drug use, warrants for arrest, cancelled drivers' licence, 'forbidden driver', family violence, and 'uses Police scanner'. Based on the information available, Officer A considered Mr X to be a significantly higher threat than Ms Y.
22. Officer A later told Police the information showed Mr X *"had recently stated that he was 'sick of the cage, Police were making up charges, and he keeps ending up in prison ... [he] isn't going to*

³ 'Fire orders' are an explanation of the circumstances under which Police may use firearms (see paragraphs 111-116 for relevant policy).

⁴ The Officer Safety Alarm (OSA) is a device that, when the alarm button is activated, sends an emergency message and the officer's GPS co-ordinates to a Police Communications Centre.

⁵ A Police scanner enables a listener to tune into a Police radio frequency, and thus hear Police radio transmissions.

put up with it". Police also wanted to speak with Mr X in relation to his failure to stop for Police the previous day. Officer A concluded that Mr X was "*probably the offender*" who had stolen the firearm, explaining that: "*It would be unusual for us to get two burglaries within 12 hours of one another without them being the same people.*"

23. From his discussions with the Police Northern Communications Centre (NorthComms) and Officer B, Officer A learned the victim of the burglary had been assaulted and two cars had been involved. The stolen car was a silver Holden, low on petrol, and the other car involved was a dark Subaru.
24. A local resident, Mr Z, told Officer A he had encountered a man and a woman driving vehicles matching the descriptions of the Subaru and stolen Holden. Officer A considered it likely that the pair were Mr X and Ms Y. He contacted Officer B, advising him the suspects were likely still in their general area, and were heading north. Officer A also contacted Officer C, a sergeant from another nearby station. Officer A drove north to catch up to Mr X and Ms Y.
25. A short time later Officer A received information that the pair were travelling south, likely in the vicinity of a local petrol station on a rural state highway. Officer A called Officer B to update him, and drove towards the petrol station.
26. From the information known to him at the time, Officer A believed if he was to encounter Mr X and Ms Y, they may be armed. He considered that although the firearm may not be in working order, he would need to treat any firearm he encountered as a real threat. He pulled over and called the Waikato District Command Centre (DCC) and NorthComms to discuss his thinking on this, and to work out a plan.

Arming

27. Police policy states that Police may arm themselves in circumstances where their risk assessment of a situation is that it is "*in, or likely to escalate to be within, the death/grievous bodily harm range*".
28. Officer A said he believed Mr X and Ms Y had a firearm with them. Although the information received was that the stolen firearm was not in working order, Officer A decided that if he saw a firearm, he needed to treat it as though it were operational. This is consistent with Police policy on firearms, which states that: "*It is better to take the matter too seriously than too lightly.*"
29. The Authority considers that the remote location, time of evening, and minimal staff available increased Officer A's sense of isolation and vulnerability.
30. The Authority accepts Officer A was right to take a cautious approach, and treat any firearm as though it was in working order. It was therefore appropriate for Officer A to arm himself.
31. Police policy at the time of this incident also required that when arming themselves, officers must remind themselves of the Police 'fire orders'. Officer A did this, and was also up to date with all of his firearms training at the time of this incident.

Ballistic body armour

32. Police policy states: “Employees **must** wear approved ballistic body armour when deploying to an incident where they believe firearms are present or could be present.”⁶
33. Officer A had ballistic body armour in the boot of his car; however, he did not put it on when he armed himself with the pistol, or at any other time during this incident.
34. Officer A said that he finds the ballistic body armour cumbersome and difficult to drive in.⁷ Nonetheless, since Officer A considered it necessary to arm himself he should have put on his ballistic body armour for the extra protection it offered.
35. Officer A told the Authority: “I am aware if we arm up it should be on ... we may look at hanging a set of armour on the back of the passenger’s seat so it is more accessible”. The Authority is therefore satisfied that Officer A has learned from this incident, and no further action is required.

Informing NorthComms

36. When officers arm themselves, they are required to advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms, unless this is impractical in the particular situation.
37. In this case Officer A advised the District Command Centre and NorthComms that he was arming himself as soon as reasonably possible, given the challenges presented by limited cellphone coverage.⁸

FINDINGS ON ISSUE 1

Officer A was justified in arming himself, as he believed Mr X and Ms Y were in possession of a firearm.

Officer A breached Police policy by not putting on his ballistic body armour.

Officer A appropriately advised NorthComms that he was arming himself, and had reminded himself of the Police ‘fire orders’.

Issue 2: Was Officer A justified in firing his Glock pistol when the Subaru drove towards him?

38. At about 9.40pm, Officer A saw the Subaru and Holden drive past him near the petrol station. He followed them, advising NorthComms he had just seen the two cars.
39. The weather was foggy and it was dark. Officer A knew that his only nearby support was Officer B.

⁶ Ballistic body armour (in this case, hard armour plating (HAP) over standard issue Stab Resistant Body Armour) provides additional protection of vital organs during incidents involving firearms (see paragraphs 109-110 for policy).

⁷ Police have recently started using a new type of ballistic body armour, which fits inside their day-to-day stab resistant body armour. This may alleviate the problem.

⁸ Officer A did not advise his supervisor or NorthComms via the radio, due to the possibility that Mr X and Ms Y had a Police scanner.

40. The two cars pulled off the road and stopped in front of the petrol station. Officer A activated his marked Police car's flashing red and blue lights. As he approached the two cars, they pulled out onto the road again with the Subaru in front and the Holden behind.
41. Neither of the vehicles stopped, so Officer A followed behind the Holden. The Subaru went out of sight but the Holden turned right and stopped on a gravel area in front of a house about 150 metres from the petrol station, facing towards the station.
42. Officer A parked his Police car at about a 90 degree angle to the Holden, facing the driver's door. Officer A saw there was only one person in the stolen car. He recognised the driver as Ms Y (from the photo on the Police database), and advised NorthComms of this.



Photo taken from the Police Crime Scene Report, showing the positions of the Holden and the Police car.⁹

43. Officer A got out of his car, taking the keys but leaving the engine, headlights and red and blue lights on and the driver's door open. He was wearing his high visibility raincoat. He walked to the Holden and told Ms Y she was under arrest for stealing the car.
44. While Officer A was talking with Ms Y, he heard the Subaru stop and turn around. It came up the road, and then onto the gravel patch towards the Holden and Police car.
45. Officer A could not see inside the Subaru. However, all the information he had received indicated there were two people involved in the earlier burglary; a male and a female. Officer A was confident that Ms Y and Mr X were the two people involved in the burglaries, and Mr X was in the Subaru alone.
46. When the Subaru came onto the gravel area, Officer A ran around the back of the Holden to its far side, to get out of the Subaru's path. He heard the driver of the Subaru yelling to Ms Y to get

⁹ The red arrow on the left side of the picture is pointing to where Officer A left his empty magazine after the incident.

in his car. Ms Y got out of the Holden, and Officer A moved towards her to prevent her from escaping. He had not yet had the opportunity to handcuff her.

47. Officer A drew his pistol, and Ms Y yelled to Mr X “*he’s got a gun*”, or words to that effect, more than once.
48. Officer A believed that at this point Mr X drove back to the petrol station, 150 metres away, and turned his lights off. Mr X paused there for a short time. Officer A said he thought Mr X might have been arming himself with the stolen firearm. Mr X then drove quickly back to the gravel area, and towards the Police car.
49. Officer A fired 21 bullets in total during the next part of this incident. He told the Authority he was not entirely clear on the timing of the events because they unfolded so quickly. There were some specific details, such as the order or number of times Mr X drove at him, of which he could not be certain. However, the recording of the incident, Ms Y’s account and the location of cartridges later found by Police suggests the shooting occurred in three stages as described below.
50. The audio recording indicates that Officer A fired all the shots within about 50 seconds.

Stage 1: Mr X rams the Police car door

51. Officer A recalled:

“... I’m yelling at [Ms Y] to stay.... I’m yelling the whole time. I tell [Mr X] to get out of his car. I’m looking over the top of my car at his car and I’ve got the bright lights of my car just flashing and blinding me every time they flash. ... I’m looking at my threat exposure and my necessity what I’ve gotta do, I’m wondering what he’s got, why he’s driven away and then he’s come back.”

52. Mr X drove alongside the driver’s side of the Police car towards the open door, shunting the door hard enough that it was pushed backwards, into the front panel of the car. Officer A said he took cover by the front passenger’s side of the Police car. The scene examiner noted that marks caused by sudden acceleration on the sealed surface of the road showed the Subaru was driven forward and back on the driver’s side of the Police car “*on more than one occasion*”.
53. Officer A did not recall firing his pistol at the Subaru at this time. However, the scene examiner found a bullet hole in the front of the Subaru and a bullet hole in the driver’s door of Officer A’s Police car. These likely resulted from shots fired about the time the Subaru rammed the door. The audio recording of the incident, while not conclusive, also suggests that Officer A fired two separate shots about this time. Therefore, the Authority finds on the balance of probabilities that Officer A must have fired shots during ‘Stage 1’.

Stage 2: Mr X reverses towards Officer A

54. Mr X then accelerated backwards around the Police car, and towards Officer A.

55. Officer A said he considered firing a warning shot with his pistol at this time, but did not think this would be appropriate in the circumstances. He explained that it was too noisy,¹⁰ and Mr X already knew he had a gun. Officer A said he yelled repeatedly for Mr X to get out of the car and for Ms Y to remain where she was.
56. Officer A said he ran to the front of the driver's side of the Holden. He then followed Ms Y, who had moved to the rear of the driver's side of the Holden (beside the back wheel on the side closest to the Police car). Mr X reversed quickly towards Officer A, with what the officer described as "*a real purpose*". Fearing for his safety, Officer A backed around the rear of the Holden, to its back left wheel, and fired his gun several times towards the Subaru.
57. At about this time Officer A radioed NorthComms. There were some issues with the reception, but he was able to advise NorthComms that the car was reversing towards him in an attempt to "*ram*" him. Officer A also advised that he was firing at the Subaru. NorthComms directed Officer A to push his Officer Safety Alarm, which he did.¹¹
58. In response to Officer A firing shots at the Subaru, Mr X drove forwards and away from Officer A. Officer A then moved towards Ms Y, whom he had arrested but not yet handcuffed, to stop her from leaving. Mr X yelled at Ms Y to get into his car, and began reversing towards Officer A again. Officer A retreated and again fired at the back of the Subaru.
59. Officer A cannot recall exactly how many times he moved towards Ms Y and Mr X reversed towards him, or how many times he responded by firing at the moving Subaru. He believes it happened at least four or five times.
60. The audio recording indicates that, about 20 seconds after the final shot of 'Stage 1', Officer A fired 14 shots continuously over a five-second period. About 14 seconds later, he fired another shot. This would have been the last bullet in his pistol's magazine (which holds 17 bullets).
61. Officer A went to the rear of the Holden to reload. At about this time Ms Y got up and ran to the Subaru. She got in and Mr X drove away.

Stage 3: Mr X and Ms Y drive away in the Subaru

62. Ms Y told the Authority that Officer A kept shooting after she had got into the Subaru, and she remembered having to duck down in the car.
63. Ballistic and audio evidence indicates that Officer A fired four more shots after he reloaded his pistol. According to the audio recording, Officer A fired these shots in quick succession about seven seconds after the final shot in 'Stage 2', and the Subaru accelerated away immediately afterwards.

¹⁰ Officer A later explained that there are dogs living on the nearby property, which were barking loudly throughout the incident, adding to the noise.

¹¹ This alarm would have helped NorthComms to locate Officer A, but it did not register until the following day. The Authority is looking at the issues involved with Officer Safety Alarms in a review of Policing in Small Communities.

64. Officer A did not remember firing these shots. He told the Authority he remembered thinking about firing at the Subaru's tyre as it was driving off, but could not recall whether or not he did this.
65. The Authority finds that, on the balance of probabilities, Officer A fired his final four shots at the time Ms Y got into the Subaru.

Was Officer A justified in firing the shots under section 48 of the Crimes Act?

66. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another.
67. In order to rely on a defence under section 48, a person's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
- 1) What were the circumstances as Officer A believed them to be? (a subjective test)
 - 2) Was Officer A's use of force for the purpose of defending himself or another? (a subjective test)
 - 3) If force was used for the purpose of defending himself or another, was the force used reasonable in the circumstances as Officer A believed them to be? (an objective test)

What were the circumstances as Officer A believed them to be?

68. The Authority accepts the following factors contributed to Officer A's assessment of the situation at the time he decided to fire the shots:
- a) Officer A believed Mr X was driving the Subaru, and considered it likely Mr X had a gun. He also thought (correctly) that Mr X was alone in the car.
 - b) Mr X was known to have alerts for violence and assaulting Police. He was apparently on the run, having committed an aggravated burglary and stolen a firearm.
 - c) Officer A said that when Mr X drove to the petrol station, paused there and turned his car's lights off, he thought Mr X was arming himself with a gun and: *"I was pretty sure I was in a lot of danger then. As soon as he drove away and then came back I was, I was, yeah I was crapping myself."*
 - d) Officer A was on his own.
 - e) Officer A said it was pitch black, apart from his Police car's headlights and flashing red and blue lights. He said these essentially blinded him, and emphasised he could not see anything due to the light. However, he was aware he would easily be seen in his high-visibility raincoat.
 - f) Officer A believed that the trees would provide inadequate cover, and that he would not be able to hide from Mr X: *"I'm aware that I'm lit up. I think that running's not an option because I'm too visible and even if I got to the trees I'd be visible."*

- g) Officer A said he also could not flee to the nearby property because he did not want to put the residents at risk, and Mr X could run him down in the Subaru.
69. During Stage 1 of the shooting (see paragraphs 51-53), Mr X drove alongside the Police car and rammed the open driver's door. Officer A does not recall firing any shots at this point, but evidence from the scene indicates he did fire two shots at the front of the Subaru. The Authority is satisfied that Officer A was in a vulnerable position (only metres away from the Subaru) and believed Mr X posed a threat to his life.
70. During Stage 2 (see paragraphs 54-61), Mr X reversed around the Police car and then repeatedly reversed towards Officer A. Officer A reported that the Subaru got to within a metre of him at least once. He recalled firing shots at Mr X while advancing and retreating from a position at the rear of the Holden, and told the Authority he was aiming at the driver's seat, trying to stop the car by shooting the driver. He said he began shooting because: *"I thought [Mr X] was gonna run me over. I thought that he wasn't gonna stop"*. He continued firing because:
- "It worked the first time. He stopped. The first time I did it he stopped and so it was like that worked and it was – yeah, and I tried to get to [Ms Y] again and it was – and then he came roaring at me and so it was like, 'He's going again, he's gonna get me', and so I fired and retreated at the same time and it was just purely, it's to try and stop him running me down."*
71. During Stage 3 (see paragraphs 62-65), Ms Y got into the Subaru with Mr X and they drove away from Officer A. Officer A did not recall whether he fired any shots at the Subaru at this point, but Ms Y recalled that he did. Additionally, the timing of when Officer A paused to reload his pistol suggests that he fired his final four shots as, or after, Ms Y got into the Subaru. The audio evidence indicates that the Subaru accelerated away immediately after these shots were fired.

Was Officer A's use of force for the purpose of defending himself or another?

72. The Authority accepts that when Officer A fired at the Subaru during Stages 1 and 2, he did it to defend himself. He thought Mr X was using the Subaru as a weapon, and was trying to run him over and kill or seriously injure him. His intention was to stop the car by shooting and incapacitating Mr X.
73. However, it is not clear that the shots Officer A fired during Stage 3 (as, or after, Ms Y got into the Subaru) were for the purpose of defending himself from an imminent threat.
74. Officer A did not remember whether he fired shots at this time, so was unable to say why he had fired them.
75. It is possible that Officer A failed to reassess the situation at this point. The Subaru would have been stationary, no longer posing an imminent threat to Officer A. In those circumstances it would be difficult to argue that he fired the shots for the purpose of defending himself.
76. However, the Authority considers it likely that these final shots were a continuation of Officer A's response to the threat of Mr X reversing towards him, and that Officer A still believed that Mr X posed a genuine threat to his life. In Officer A's mind, the fact that Ms Y had got into the

Subaru would not have prevented Mr X from trying to run him over. The Authority therefore accepts, on balance, that the shots fired during Stage 3 were also for self-defence.

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

77. To assess the reasonableness of Officer A's actions, the Authority must consider the nature, degree, and imminence of the threat posed, and the proportionality of the response. Firing a gun is an exercise of force which could potentially cause death or grievous bodily harm, therefore the threat faced by the officer must be at the same level.
78. Officer A yelled at Mr X to stop and get out of his car, but Mr X did not comply. The Authority is therefore satisfied that Mr X was asked to surrender prior to Officer A shooting at him.
79. Furthermore, the Authority accepts that Mr X could not be stopped by any other means than the use of a firearm. Officer A believed he was in a vulnerable position and had no realistic way of hiding or escaping. The other defensive options available to Officer A (such as baton, pepper spray, or Taser) would have been ineffective against an attacker using a car as a weapon. The Authority also notes that the fact Mr X repeatedly reversed towards Officer A showed a degree of determination on his part.
80. In light of the fast-paced nature of the incident, and the extremely high level of danger to which Officer A was exposed, the Authority also considers it was not practical for Officer A to delay shooting at Mr X.
81. The Authority is therefore satisfied that, up until Mr X drove away with Ms Y, he presented a significant and imminent threat to Officer A's life. Had the car hit Officer A, he could have been seriously injured, if not killed. Officer A's use of a firearm to protect himself was therefore proportional, and justified in the circumstances.

FINDINGS ON ISSUE 2

Given the extreme circumstances Officer A was faced with, it was reasonable for Officer A to shoot at the Subaru to prevent himself from being killed or seriously injured.

Issue 3: Did Police carry out appropriate post-incident procedures?

82. When Mr X and Ms Y left in the Subaru, Officer A remained at the scene. Officer A turned off his car's engine, and tried to bend the driver's door back around to close it but the door was stuck. Officer A accepts that he should not have attempted to push the Police car door back into place at this time, as this disturbed the scene of the shooting.
83. Officer B arrived a short time later. With very few officers available due to the challenges associated with policing in rural communities, they decided Officer A would stay at the scene, and Officer B would attempt to find Mr X and Ms Y.
84. Officer A later said that, in hindsight, it would have been better for Officer B to remain with him because once Officer B left, Officer A was alone in the secluded area without a working vehicle. Officer A explained that he felt extremely vulnerable at this time.

85. After a short while, Officer B returned without locating Mr X and Ms Y. He and Officer A spoke with the local residents while they awaited further backup.
86. The shift sergeant (Officer D) arrived from a nearby town and took possession of Officer A's gun. Officer E, a detective, was the next Police officer to arrive. Police examined the scene, assisted by Officer A. Officer A guarded the scene for several hours until he was relieved.
87. After speaking with his lawyer, Officer A suggested that he be breath tested. Officer B tested Officer A for alcohol, observed by Officer C. There was some confusion as to whether or not Officer A needed to do a blood test to check for drugs in his system. After several hours of delay (due to the scene's remote location, and the need to call in staff from other areas), Officer A was drug-tested. The results for the alcohol and drug tests were clear.
88. Police policy requires that when an officer fires a gun, a senior officer must take certain steps to secure the scene. These include marking the position of the officer who fired, empty cartridge cases, bullet fragments, and any other items associated with the discharge. The senior officer must also secure the firearm and remaining bullets.
89. Although there was some uncertainty regarding the post-incident processes to be undertaken in this case, the Authority is satisfied that appropriate procedures took place following the shooting, including alcohol and drug testing of Officer A. The Authority notes that Police had few options for scene management and pursuit while waiting for backup to arrive, due to limited resources. In such circumstances, it was reasonable for Officer A to remain at the scene while Officer B searched for Mr X and Ms Y, who were believed to be in possession of a firearm.
90. It was unfortunate that Officer A attempted to close his car door; however, the Authority accepts this was a momentary lapse of judgement on Officer A's part. It does not consider that this had a serious effect on the integrity of the scene or that further action is required.
91. Police contacted Officer A the day after the shooting and offered support. Officer A said he was generally looked after very well by Police, but he would have liked to have been kept better informed about how the Police investigation was progressing.
92. The Authority notes that the Police policy, practice, and procedure review concluded there were some issues with the way the scene was managed following the discharge of shots. Having spoken to Officer A and conducted its own investigation, the Authority is confident that lessons have been learned from this matter. Although there were some shortfalls in the management of the post-shooting situation, the Authority finds that Officers A and B acted appropriately.
93. Police have created a critical incident working group to address some of the difficulties highlighted through this review. The Authority is therefore satisfied that any issues raised are being addressed more broadly by Police.

FINDING ON ISSUE 3

The Authority is satisfied that any shortfalls identified in the post-incident procedures are being appropriately managed by Police.

SUBSEQUENT POLICE ACTION

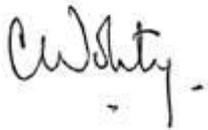
94. On 20 September 2017, Police conducted a formal debrief at Paeroa Police Station. Officers at the debrief identified areas for improvement, particularly regarding the welfare of Police involved in critical incidents and their families. The Authority understands that Police are prioritising work on this issue.
95. When spoken to by the Authority, Officer A was clear in his view that Police officers need to receive more training about the process to be followed after Police have discharged a firearm. The Authority understands that Police are looking more broadly at post critical-incident policy, and ensuring that senior officers and those who will be assisting at the scene will all be suitably trained and informed of policy.¹²

¹² For example, Police have developed simplified checklists for Police so that they can each be aware of their individual responsibilities after a critical incident.

CONCLUSIONS

96. The Authority found that:

- 1) It was reasonable for Officer A to shoot at the Subaru to prevent himself from being killed or seriously injured.
- 2) Officer A was justified in arming himself, as he believed that Mr X and Ms Y were in possession of a firearm.
- 3) Officer A appropriately advised NorthComms he was arming himself, and had reminded himself of the Police 'fire orders'. However, he breached Police policy by not putting on his ballistic body armour.
- 4) Although Police identified some issues with the post-incident procedures in this case, the Authority is satisfied they are being addressed.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

24 October 2019

IPCA: 17-0457

Power to arrest

97. Section 315 Crimes Act 1961 provides that a constable can arrest without warrant any person whom he or she has good cause to suspect has committed an offence punishable by imprisonment.

Use of force

Law

98. 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.”*
99. 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.”
100. 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

101. 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.
102. 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.
103. The overriding principle when applying TENR is that of ‘safety is success’. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
104. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.
105. 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)).

106. A key part of an officer's decision about 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.
107. 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.
108. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

Firearms

Responsibilities when firearms are carried

109. Police policy on firearms requires that when an officer carries a firearm because they have assessed a situation as being within, or likely to escalate to be within, the death/grievous bodily harm range, they must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable, and also deploy with a Taser where one is available.
110. When deploying to an incident where firearms are or may be present, officers must wear approved ballistic body armour, or hard armour plate (HAP) which must be worn over stab resistant body armour (SRBA).

Use of firearms

111. The 'Police firearms' chapter of the Police Manual instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act, and also sets out the circumstances in which the use of lethal force is justified.
112. Police policy provides that Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape where:
 - Police believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person (whether an identifiable individual or members of the public at large); and

- the offender flees to avoid arrest or escapes after arrest; and
 - the flight or escape cannot reasonably be prevented in a less violent manner.
113. Police must also act in accordance with the Crimes Act provisions referred to in paragraphs 98-100.
114. The policy reminds officers that “An overriding requirement in law is that minimum force must be applied to effect the purpose.” It also says that: “Where practical, Police should not use a firearm unless it can be done without endangering other persons.”
115. An offender is not to be shot until all of the following conditions have been satisfied:
- *“they have first been asked to surrender (unless it is impractical and unsafe to ask them);*
 - *it is clear that the person cannot be disarmed or arrested without first being shot; and*
 - *further delay in apprehending the offender would be dangerous or impractical.”*
116. Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law and all relevant instructions and guidelines in the Police Manual.

Principles applying when offenders are armed

117. When dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:

“It is better to take the matter too seriously than too lightly.

Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.

Make every effort to prevent casualties.

Caution is not cowardice. When the offender's actions permit, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.

Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this.”

Shooting at motor vehicles

118. Shots may only be fired at moving vehicles in very exceptional circumstances. It is extremely difficult to disable a vehicle by discharging a firearm at tyres or other parts. The small target area and the margin for error impose a high probability of misdirection or ricochet increasing the risk of causing death, injury or damage.

What to do immediately when firearms are discharged

119. The officer discharging the firearm must complete a Tactical Options Report, and the senior employee present or the person appointed to do so must take these actions immediately (or at the first safe opportunity):

“If necessary, render first aid when safe to do so and contact medical emergency services.

Mark the discharging employee's position, the empty cartridge case, bullet fragments, injured or deceased people, and any other items or people associated with the discharge.

Preserve the cartridge case and, where possible, the bullet or bullet fragments.

Secure the firearm and remaining rounds.

On no account is the firearm to be altered or items/accessories removed. It must be secured in the state at which it was at the time of firing.

Advise the employee's immediate supervisor who will promptly advise the District Commander.”

Police policy on drug and alcohol testing post shooting

Who will be tested and in what circumstances?

120. The District Commander of the District in which a Police shooting occurs is responsible for ensuring that any employee believed to have discharged a firearm during the incident is requested to undergo a drug and/or alcohol testing procedure.

How tests are undertaken

121. As soon as is reasonably practicable after a Police shooting, and following the management of immediate safety and welfare considerations, the employee or employees who have fired shots that have caused injury or death, or could have caused injury or death, to any person, shall be tested for drugs and alcohol.

122. The process for this testing is:

- The District Commander or their delegate will contact the testing service provider and arrange for the officer to be drug tested, either on site or at another agreed location.
- Where possible, a breath test should be conducted within two hours of the shooting. If the tester is not available within that timeframe, Police may carry out a passive breath test on the officer who fired the gun.
- A urine sample must also be obtained and sent to the lab for testing.

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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