

# Use of force during arrest in Geraldine

## OUTLINE OF EVENTS

1. During the evening of 31 August 2018, Officer A observed a Holden Commodore Ute pull out of an address in Geraldine, known to be frequented by drug users. He signalled the Holden to stop at a nearby intersection but the driver, Ms W, accelerated away. Officer A began a pursuit but abandoned it 15 seconds later.
2. Officer B heard Officer A say over the Police radio that the Holden was heading north towards the Orari bridge. As he was nearby he drove onto, and stopped on, the single-lane bridge to forewarn oncoming traffic of the approaching Holden and to prevent it from causing a collision. Ms W subsequently arrived, pulled onto the bridge, and drove into the back of the Police car. Officer B drove off the bridge and conducted a U-turn several hundred metres up the road and returned to park facing the bridge.
3. Meanwhile, Ms W and her passenger, Mr X, exited the Holden and ran towards the civilian vehicles waiting to cross the bridge. The driver of the first vehicle, Mr Y, said Mr X opened his driver's side door, told him to get out of the car, and began pulling at his shirt. Mr X got into Mr Y's vehicle and pressed the accelerator with his foot to rev the engine, but Mr Y refused to exit the vehicle.
4. Mr X then ran to the next vehicle in the line of traffic. He knocked on the window but was unable to open the door as it was locked. He returned to Mr Y, who said Mr X *"jumped in [the car] and punched me a few times"*.
5. After Mr X failed to extract Mr Y from his car, Ms W jumped over the bridge railing and down a bank where she hid for the remainder of the incident.
6. Meanwhile, Officer B approached Mr X who began running around Mr Y's vehicle to evade him. Officer A arrived, and the two officers chased Mr X around the stationary vehicles, but he bypassed them and entered Officer B's unlocked Police car.

7. The officers told Mr X to get out, but he did not comply. Instead he released the handbrake and the Police car began rolling backwards. Officer A subsequently broke the Police car window with his baton and the two officers each fired their Tasers twice at Mr X. Officer A also attempted to use pepper spray on Mr X.
8. Mr X then opened the car door and ran out into the road. Officers A and B chased, caught and detained Mr X, who resisted arrest. A member of the public, Mr Z, assisted the officers to restrain him.
9. Police searched Mr X and found he was carrying a knife. A Police dog handler located Ms W and arrested her without incident. Ms W was charged with driving in a dangerous manner.
10. Mr X was charged with two attempts to resist Police, two attempted unlawful takings of motor vehicles, unlawful interference, possession of a knife, an aggravated assault, and three assaults.
11. Police notified the Independent Police Conduct Authority about the incident due to concerns about the Taser deployments. Police also completed an employment investigation and ultimately determined that the officers' use of the Tasers was lawful and reasonable in the circumstances.
12. The Authority independently investigated the officers' actions during and after the pursuit. This report sets out the results of that investigation and the Authority's findings.

## THE AUTHORITY'S INVESTIGATION

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13. The Authority interviewed Officers A and B, Mr X, Mr Y, and Mr Z. The driver of the Holden, Ms W, did not respond to requests for an interview. The Authority did not summon her to provide evidence as she had provided two conflicting accounts to Police and therefore lacked credibility.
14. The Authority also monitored the Police investigation throughout and reviewed all the documentation produced by the Police investigation team, including statements from independent civilian witnesses.
15. The Authority identified and considered the following issues:
  - 1) Did Officer A conduct the pursuit in accordance with Police policy?
  - 2) Was Officer B's use of a Police car to block the Orari bridge appropriate?
  - 3) Was the force used by Officers A and B reasonable?
  - 4) Did Police ensure Mr X was provided with appropriate medical assistance once he had been detained?

## THE AUTHORITY'S FINDINGS

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### Issue 1 Did Officer A conduct the pursuit in accordance with Police policy?

16. At about 6.16pm on Friday 31 August 2018, Police received a call reporting that a black Holden Commodore Ute was driving erratically at speed, on the wrong side of the road with no lights on near Washdyke, Timaru. The caller was concerned that other drivers were having to “*swerve rather aggressively*” to avoid being hit. The Police Southern Communications Centre (SouthComms) broadcast this information over the Police radio to officers in the area.
17. At about 6.45pm, Officer A was on McKenzie Street in Geraldine when he saw a black Holden pull out of an address known to be associated with drug use. As he observed the Holden drive away, he got into his Police car and took an alternative route to intercept it.
18. Officer A told SouthComms what he had seen and that he was attempting to locate the Holden. He then saw it travelling through a compulsory stop sign at the intersection of McKenzie and Connolly Street. Officer A activated his lights and siren to signal the Holden to stop but the driver, Ms W, accelerated away.
19. Officer A advised SouthComms that the Holden had no tail lights or registration and that he was commencing a pursuit. The dispatcher gave the pursuit warning, which Officer A acknowledged, as per Police policy.<sup>1</sup>
20. Officer A pursued the Holden for approximately 15 seconds before it pulled onto the other side of the road and switched its headlights off. Officer A advised SouthComms he was abandoning the pursuit and pulled over to stop on the side of the road.<sup>2</sup>
21. The Authority accepts that Officer A had grounds to initiate the pursuit under section 114 of the Land Transport Act 1998.<sup>3</sup> He advised SouthComms of his location and reason for the pursuit. When he determined the risk was too great, he abandoned the pursuit as per Police policy. Officer A was justified in commencing a pursuit and complied with Police policy throughout.

### FINDING ON ISSUE 1

Officer A was justified in commencing a pursuit and complied with Police policy throughout.

### Issue 2: Was Officer B's use of a Police car to block the Orari bridge appropriate?

22. Officer A advised SouthComms that the Holden was continuing north on State Highway 79 towards Orari Bridge. SouthComms authorised an ‘inquiry phase’ and the use of road spikes.<sup>4</sup>

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<sup>1</sup> See paragraph 83 for relevant Police policy.

<sup>2</sup> See paragraph 87 for relevant Police policy.

<sup>3</sup> See paragraph 72.

<sup>4</sup> Police policy states that during an ‘inquiry phase’ all viable lines of inquiry to identify and hold the fleeing driver accountable should be exhausted. The inquiry phase should be dealt with as a priority prevention activity. Road spikes are a tyre deflation device.

23. Officer B heard this on the radio and, as he was nearby, he decided to drive northbound onto the single-lane bridge to stop any oncoming traffic by blocking the road, in anticipation of the Holden's arrival.
24. Officer B estimated that he was parked at the eastern end of the bridge, nearest the oncoming traffic, for approximately two minutes with the Police car's headlights and taillights on. He did not activate his vehicle's red and blue lights immediately, but did so as the Holden drove up behind him.
25. During his interview with the Authority, Officer B said he believed blocking the bridge was the safest option. Although he acknowledged that traffic could accumulate, Officer B said that parking on the bridge prevented any oncoming traffic bypassing him and colliding head-on with the Holden. He indicated that the bridge was regularly used by tourists and others from outside the Geraldine area, and he believed these people had limited experience of single-lane bridges. He therefore parked on the bridge to ensure the safety of other road users.
26. Officer B told the Authority he considered using road spikes as authorised by SouthComms. However, he decided against it as traffic was unusually heavy that evening and he was not sure of the vehicle's description other than it was "dark" (as it had no registration). Furthermore, he said it was difficult to distinguish oncoming vehicles in the dark with headlights on.
27. The Authority is satisfied that section 30 of the Search and Surveillance Act 2012 authorised Officer B to use his Police car to block the Orari bridge as:
  - he had reasonable grounds to believe Ms W had committed an offence punishable by imprisonment;<sup>5</sup>
  - the Holden presented a risk to oncoming vehicles, having switched off its lights and driven on the wrong side of the road;
  - he reasonably believed the Holden would not stop on request as it had not done so for Officer A;
  - the vehicle was unidentified and the occupants were unknown, therefore Police had no alternative lines of inquiry to establish their identities through an 'inquiry phase';
  - there was a risk of collision between the Holden and a civilian vehicle on or near the bridge;
  - he had advised SouthComms that he was parking on the bridge, which SouthComms acknowledged; and
  - Officer B's car was visible on the bridge (with headlights on and reflective livery) and had safe stopping distances in front and behind it.<sup>6</sup>

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<sup>5</sup> Driving in a dangerous manner is an offence which is punishable by a term of imprisonment not exceeding three months.

<sup>6</sup> See paragraphs 88-93 for relevant Police policy.

## FINDING ON ISSUE 2

It was appropriate for Officer B to use his Police car to block the Orari single-lane bridge.

### Issue 3: Was the force used by Officers A and B reasonable?

28. Officer B subsequently advised SouthComms that the Holden had driven onto the bridge and into the back of him. He looked in his mirror and saw Mr X exit the Holden, walk to the front of it, then return and reach inside the car door. He could not see what he was doing but was concerned he was retrieving a weapon.
29. Officer B drove forward off the bridge and conducted a U-turn several hundred metres up the road. When he returned, he angled the Police car's headlights to provide light on the area as there were no street lights and it was dark. He parked his Police car alongside Mr Y's car (after Mr X had assaulted Mr Y).
30. Officer B told the Authority he believed he put the handbrake on before exiting the vehicle. However, as he began running towards Mr Y's car, he realised he had left the keys in the Police car so returned to retrieve them. Officer B later acknowledged he should have locked the car.
31. Mr X began running around Mr Y's car and Officer B chased him (Ms W had by now hidden down the bank). Officer B said he told Mr X to "*get on the ground*" multiple times but Mr X did not comply and instead continued running around "[squealing] *like a factory-farmed pig*".
32. Officer A arrived, having parked on the bridge behind the Holden. Mr X ran away from the officers towards Officer B's Police car. Mr X entered the Police car's driver's side door and locked the car.
33. Officers A and B told Mr X to "*get out of the car*" and made multiple attempts to unlock and open the driver's door using the key fob and exterior door handle. However, Mr X repeatedly pressed the internal door locking mechanism to prevent the officers gaining access. He also released the handbrake, which caused the Police car to roll backwards. Officers A and B repeatedly told Mr X to put the handbrake on, which can be heard on Officer A's Taser camera (TaserCam) footage. The Orari bridge CCTV footage shows the Police car rolling backwards by about 10 metres while Officers A and B walk alongside by the driver's door.
34. Officer A told the Authority that when Mr X entered the Police car, he was concerned he posed a "*more serious and imminent threat*" to Police and the public. He thought Mr X could gain access to firearms inside the patrol car, and that Mr X may have had a concealed weapon on him. However, the risk of accessing the firearms lock box was low as Officer B had the keys.
35. Officer A also said he was concerned Mr X would put the vehicle in neutral or drive and escape in the Police car. However, once Officer B advised him that he had the keys, Officer A knew Mr X could not drive away.
36. Officer A decided to break the window with his baton to effect Mr X's arrest (by unlocking the car door from the inside) and extract him from the Police car once the vehicle had stopped rolling backwards.

37. Mr X told the Authority that Officer A struck him in the face with his baton when he broke the window. Officer A denied striking Mr X, either deliberately or inadvertently, and indicated that grazes and bruising to Mr X's face were as a result of Mr X actively resisting arrest (see paragraphs 58-60). As a result of these conflicting accounts the Authority is unable to substantiate Mr X's allegation that Officer A struck him in the face with his baton.
38. Nonetheless, the Authority does not consider that it was wise to break the Police car window as breaking the glass created a hazard, damaged the vehicle, and prevented Officer A reaching in to unlock the door contrary to his intention. While the Authority accepts the officers felt the need to act urgently, they should have taken the time to consider alternative courses of action before Officer A broke the Police car window.

### *Use of force*

39. Sections 39 and 40 of the Crimes Act 1961 provide for Police officers to use force that is necessary to overcome force used in resisting an arrest, or to prevent the escape of a person who *"takes flight in order to avoid arrest"*. The Court of Appeal has determined that *"such force as may be necessary"* to prevent an escape means such force as is reasonable in the circumstances as the person who used the force reasonably believed them to be.<sup>7</sup>
40. Officers A and B had lawful grounds to apprehend Mr X as:
- Officer B believed he may be in possession of a weapon;<sup>8</sup>
  - he had attempted to steal Mr Y's car and subsequently assaulted him;
  - he attempted to enter a second civilian vehicle; and
  - he had entered a Police vehicle, locked the doors, and released the handbrake which Officers A and B perceived to be an intention to steal the car.<sup>9</sup>
41. Officer B said that, although Mr X was now in the vehicle, he had assaulted Mr Y moments before and was now screaming and kicking the car interior. Officer B believed they needed to arrest Mr X urgently due to his erratic behaviour. Like Officer A, Officer B believed Mr X could endanger the public if he accessed the firearms in the Police car. He was also concerned that Mr X might escape (either in the car or on foot). Officer B said: *"At the time I was concerned that anything could've happened."*
42. Officer A said Mr X was *"yelling and screaming... he wasn't listening to anyone... his arms were [flailing] around and I didn't honestly know what he was trying to do."* The TaserCam footage confirms Mr X was not engaging with the officers.

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<sup>7</sup> R v Haddon [2007] NZAR 135 (CA), at para 40.

<sup>8</sup> See paragraph 28.

<sup>9</sup> Mr X later told the Authority that it had been his intention to escape in the Police car.

43. The Authority is satisfied that Mr X's behaviour was assaultive in the moments prior to Officer A and B's Taser deployments.<sup>10</sup>

#### *First use of Taser*

44. Officer B drew his Taser and fired it at Mr X, without warning, immediately after Officer A broke the window. However, he said his first Taser deployment was unsuccessful as only one of the two probes attached to Mr X. The TaserCam footage shows Mr X sitting in the driver's seat continuing to scream, but apparently unaffected by the Taser.
45. It could be argued that, since Mr X was contained and could not escape in the car, the officers did not need to act with such urgency to effect his arrest; they could have waited outside with their Tasers drawn, should he exit the Police car and pose a threat to them. For that reason, the Authority considers Officer B would not have been justified in using the Taser based on Mr X's erratic behaviour inside the vehicle alone.
46. However, considering that behaviour alongside Mr X's assaultive behaviour before he entered the vehicle, the Authority is satisfied that Officer B reasonably believed it was necessary to use the Taser to overcome Mr X's ongoing efforts to resist and avoid arrest.
47. Mr X had ignored instructions to get out of the car and the Authority accepts it was unlikely he would have complied had he been given an opportunity to desist by means of a warning. It was not safe to reach into the vehicle to remove Mr X due to the broken glass, nor would it have been feasible to extract him from the passenger side as he was kicking his arms and legs out.

#### *Use of pepper spray*

48. Officer A attempted to pepper spray Mr X, but discovered the canister was depleted due to an earlier incident. Officer A said he did not think it would have worked anyway as Mr X was "that amped up". Mr X believed he had been pepper sprayed, but confirmed that it had had no effect.
49. Officers A and B had attempted to communicate with Mr X, but he failed to comply with Police instructions. Having locked himself in the Police car and released the handbrake, it is evident that Mr X was 'actively resistant'.<sup>11</sup> Therefore, in accordance with Police policy, Officer A was justified in attempting to use pepper spray.

#### *Subsequent uses of Taser*

50. Officer A subsequently fired his Taser at Mr X, but he believed it was ineffective as he was too close.<sup>12</sup> Officer B said they attempted to open the driver's door to extract Mr X from the car, but this was met with aggression as Mr X kicked the car door and pulled it shut again.

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<sup>10</sup> 'Assaultive' means someone who displays intent to cause harm, through body language or physical action.

<sup>11</sup> Active resistance includes physical actions such as pulling, pushing or running away – that is, "more than verbal defiance". See paragraph 100 for relevant Police policy.

<sup>12</sup> Mr X said he did not feel the first Taser deployment but did feel two after. However, the Taser data shows no charge was created.

51. Officer B tasered Mr X for a second time to “*subdue him and effect an arrest*”. However, he once again believed the deployment was unsuccessful. Officer A also discharged his Taser for a second time. All four uses of the Taser and the use of pepper spray occurred within a 30 second period.
52. Despite repeated instructions to put the handbrake on and get out of the car, Mr X ignored the officers and continued screaming. Communication and the attempted use of pepper spray had no effect on Mr X’s behaviour. He continued to be volatile with no apparent intention to comply with the officers’ instructions.
53. According to Mr Z, an independent civilian witness who observed the incident unfold from his vehicle, Mr X was “*kicking all over the place*” inside the Police car and thought he would have “*wrecked*” the interior had the officers not acted.
54. Taser records show that no current was delivered during any of the four Taser deployments, rendering them ineffective. It was later established that Mr X was wearing four layers of clothing, which likely undermined the Tasers’ effectiveness.
55. For the reasons set out above in paragraphs 46-47, the Authority accepts both Officers A and B had legal justification to taser Mr X in order to effect his arrest.<sup>13</sup>

#### *Manual restraint and contact stun*

56. Officer B said that, after he and Officer A attempted to taser Mr X, Mr X was “*kicking out*” at the car door, opened the car door, escaped and ran towards the civilian vehicles. An independent witness in a campervan (parked adjacent to the Police car once it had rolled back) filmed Mr X exiting the Police car and running in front of the campervan with Officer A chasing him.
57. The footage shows Mr X quickly advance towards Officer A and contact Officer A’s torso under the left armpit. Mr X pushes Officer A and ducks under Officer A’s bent right arm. Mr X continues running down the middle of the road towards the bridge. Officer A turns around and chases after him, with Officer B close behind.
58. Officer A caught up to Mr X, “*shouldered*” him and tackled him to the ground. According to Officer B, Mr X “*did not relent, still trying to attack [Officer A] when they were both on the ground.*”
59. Officers A and B sat on Mr X’s back and legs, while he lay face down on the ground. They attempted to pull his arms behind his back, but Mr X resisted. Mr Z saw Officers A and B struggling to restrain Mr X and ran over to help.
60. Mr Z said Mr X was “*immensely strong*” and locked the muscles in his arms, but he sat on Mr X’s back and managed to pull one of his arms behind him. Officers A and B pulled Mr X’s other arm out from underneath him. Officer B gave Mr Z a pair of handcuffs and asked him to handcuff Mr X as he and Officer A were struggling to contain his arms. Officer B then deployed a Taser contact stun once to Mr X’s buttock to subdue him, which enabled Mr Z to apply the handcuffs.<sup>14</sup>

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<sup>13</sup> See paragraph 74.

<sup>14</sup> A Taser contact stun is an activation of the Taser while the device is directly applied to the subject’s body.



61. The Authority accepts that once Mr X was out of the Police car, it was necessary and appropriate for Officers A and B to manually restrain him because:
- Mr X had demonstrated the capacity for violence, having punched Mr Y and pushed Officer A;
  - he resisted arrest and it took three people, including a civilian, Mr Z, to overpower him;
  - Officer B said he was concerned Mr X might be reaching for a weapon in his pocket (it was later determined that Mr X was in possession of a pocket knife).
62. The Authority also considers that Officer B was justified in using a contact stun to effect Mr X's arrest, as the force the officers had already used had proven insufficient to gain control of him.
63. Mr X said he recalled telling Officers A and B he could not breathe when they sat on his back and that they were verbally abusive towards him. He told the Authority:
- "I think I blacked out or something like that, I can't really remember much after... [I was] saying, "I can't breathe" and they [said] "Good you should die" and I [said] "Get fucked" ...and yeah that was about all I remembered."*
64. TaserCam footage of Mr X's arrest does not capture the verbal exchange described by him. Officer A told the Authority that Mr X was incoherent and yelling (supported by the TaserCam footage). Officer B said that Mr X did not appear to know what was happening.
65. According to Mr Z, as soon as Mr X was handcuffed Officers A and B left to clear the bridge to allow traffic to flow (by pushing the Holden off it). Mr Z said he remained sitting on Mr X and then *"side straddling him...just hanging on to him, just keeping him there."* Mr Z said Mr X had *"worn himself out running around"* and fell asleep between Mr Z's legs.

### FINDINGS ON ISSUE 3

Officer A was justified in deploying pepper spray at Mr X.

Officers A and B were justified in using their Tasers in the circumstances.

Officers A and B were justified in using force to restrain Mr X, with the help of Mr Z.

Officer B was justified in using a contact stun to effect Mr X's arrest.

### Issue 4: Did Police ensure Mr X was provided with appropriate medical assistance once he had been detained?

66. Following the incident, Police took Mr X to Temuka Ambulance Station to detach the Taser probes from his stomach.
67. Mr X was assessed at the ambulance station and given pain killers at 8.09pm. Police became concerned that Mr X may have had a seizure, so they transported him to Timaru Hospital. He was assessed at 9.35pm, at which time he complained to hospital staff that he had pain in his head as a result of being struck in the face. His medical records show that he had a *"swelling graze, right eye brow"* and *"multiple abrasions to face/scalp"*.

68. Mr X received treatment for minor grazes to his face and was discharged at 11.30pm, at which time he was taken to Timaru Police Station. The Authority is satisfied that Mr X received appropriate medical assistance after he had been detained.

#### FINDING ON ISSUE 4

Mr X received appropriate care after he had been detained.

#### SUBSEQUENT POLICE ACTION

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69. Officers A and B have completed 'refresher' training in pursuits, the use of Police vehicles, and the use of tactical options.

#### CONCLUSIONS

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70. Officers A and B were justified in using pepper spray, Tasers and manual force to effect Mr X's arrest.
71. The Authority also found that:
- 1) Officer A was justified in commencing a pursuit and complied with Police policy throughout;
  - 2) It was appropriate for Officer B to use his Police car to block the Orari single-lane bridge;
  - 3) Mr X received appropriate care after he had been detained.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

5 December 2019

**IPCA: 18-0490**

### Law

72. Under section 114 of the Land Transport Act 1998, Police are empowered to stop vehicles for traffic enforcement purposes.
73. Section 30 of the Search and Surveillance Act 2012 states that a senior constable may authorise the establishment of a road block for the purpose of arresting a person who he has reasonable grounds to believe has committed an offence punishable by a term of imprisonment.
74. 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.”*
75. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest”*, unless the escape can be prevented *“by reasonable means in a less violent manner”*.
76. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### ‘Fleeing driver’ policy

77. The overriding principle of the Police’s ‘Fleeing driver’ policy is that: *“Public and staff safety takes precedence over the immediate apprehension of the offender”*.
78. It is the responsibility of the lead vehicle driver, or Police passenger, to notify Police Communications as soon as practicable and when it is safe to do so, that a vehicle has failed to stop, the location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not in itself a reason).
79. Under the Police ‘Fleeing driver’ policy, the pursuing officer[s] must carry out a TENR (Threat – Exposure – Necessity - Response) risk assessment when deciding to commence or continue a pursuit. The assessment required of officers includes consideration of the following:
  - a) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
  - b) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
  - c) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.

- d) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.

80. The TENR risk assessment must weigh up:

*“... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.”*

- 81. During a pursuit, warning lights and siren must always be simultaneously activated. The Police Communications Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.
- 82. The ‘Fleeing driver’ policy outlines that Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so). They must advise the Police Communications Centre of their location, direction of travel, description of the fleeing vehicle, and reason for pursuit.
- 83. The Police Communications Centre transmits a ‘pursuit warning’ to all vehicles involved: *“... if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge”*
- 84. Officers are required to carry out risk assessments before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police car.
- 85. Fleeing driver incidents must be managed in the safest possible manner. A pursuit will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing. The fact that a driver is fleeing does not in itself justify engaging in a pursuit.
- 86. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the identity of the offender becomes known, the fleeing driver does not pose an immediate threat to public or Police, and they can be apprehended later.
- 87. Officers who decide to abandon a pursuit must notify Police Communications and immediately reduce their speed to increase the distance between the fleeing vehicle and their own. They should deactivate their lights and siren once below the posted speed limit and stop as soon as it is safe to do so.

### Road blocks and perimeter control policy

- 88. A roadblock is any form of barrier or obstruction preventing or limiting the passage of vehicles. It is used only in exceptional circumstances, such as to apprehend a person when there is good reason to believe that a request to stop would be ignored.

89. A constable may temporarily close to traffic any road, or part of a road, leading to or from or near a place, if the constable has reasonable cause to believe that danger to a member of the public exists or may reasonably be expected at or near that place.
90. For safety, officers must ensure that the roadblock or checkpoint:
- is never located at an intersection;
  - is visible from a safe stopping distance, both from the front and the rear;
  - is well-lit at night;
  - where possible, takes advantage of existing obstructions such as bridges;
  - offers no adjacent escape routes; and
  - is set up to provide maximum safety for the personnel working at it.
91. There must be no danger to bystanders and extreme care must be taken not to endanger motorists.
92. Roadblocks should be staffed by two officers and a marked Police car should be parked in a prominent position. Officers should wear high visibility apparel.
93. At night, officers should stop vehicles by using the Police car's emergency flashing lights.

### **'Use of Force' policy**

94. 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.
95. 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.
96. 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).

97. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely de-escalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.
98. 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.
99. 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.

### Pepper spray policy

100. Police policy states that pepper spray may only be used on someone who is actively resisting and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, *“more than verbal defiance”*.

### Taser policy

101. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses an imminent 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”*.
102. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser unless it is impractical or unsafe 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”*.
103. 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”*.
104. A ‘contact stun’ is an activation of a Taser while the device is applied to the body of the subject.
105. Contact stuns should only be applied in situations where the operator finds themselves in close proximity to the subject and it is necessary to use force to create distance to discharge or apply alternative tactical options and/or considerations.

106. 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. It also states that mentally impaired people are among those at greatest risk from any harmful effects of a Taser.

## ABOUT THE AUTHORITY

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### Who is the Independent Police Conduct Authority?

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

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

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

### What are the Authority's functions?

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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