

# Man drowns in Waikato River during Police search in Hamilton

## OUTLINE OF EVENTS

1. On Friday 27 April 2018, Mr X breached a protection order and violently assaulted his partner in Hamilton. Police were called later that day. In addition to breaching the protection order, Mr X had outstanding warrants for his arrest, so Police began searching for him. As Police were aware Mr X might have a pistol, those officers involved in the initial search carried firearms.
2. At about 11.08pm, Mr X was seen running towards a park bordering the Waikato River. Police set up cordons around the park, and a Police dog handler and Officer A tracked Mr X to the river's edge.
3. Officer A asked for the Waikato Police boat to be launched, as the Police dog was indicating Mr X had gone into the water. Officer B, the acting duty inspector, arranged for a Fire and Emergency New Zealand (FENZ) officer to join the boat crew with a thermal imaging camera, and for the Police helicopter (Eagle) to assist in the search.
4. Officers C, D and E launched the boat.<sup>1</sup> Officers C and D were trained boat crew, but Officer E was not. Officer B instructed them to take a Taser and not to bring Mr X on board without first making a plan for doing so. The officers on the boat took this to mean their role was limited to assisting with the search for Mr X, and did not plan for rescuing Mr X from the water if needed.
5. About an hour after the dog handler had said Mr X might have entered the river, the Eagle crew spotted Mr X in the water, holding on to a branch at the bottom of a steep cliff. Officer C, as skipper, took the Police boat to this location and stopped the boat about 15 metres away from Mr X. He told the Authority he was reluctant to get too close to Mr X because his crew were concerned that Mr X might have a firearm.

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<sup>1</sup> At the time of this incident, Officer C was a constable with about 12 months experience, Officer D was a constable with about 20 months experience, and Officer E was a constable with about three and a half years' experience. All officers had current tactical training certifications, including use of Taser, at the time of the incident.

6. An officer on land shouted to Mr X, who acknowledged he was under arrest and asked that officer to pick him up from the water. The Police boat crew did not hear this and were too far away from Mr X to assist him. Mr X swam into the river towards the boat, where a strong current pulled him into an eddy. Mr X was pulled under the water and not seen alive again.
7. Police searched for Mr X until about 1.25am. Mr X's body was located on 5 May 2018, approximately 1.7 km downstream from the spot where he was last seen.

## THE AUTHORITY'S INVESTIGATION

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8. Police notified the Authority who carried out an independent investigation. As part of this investigation, the Authority:
  - interviewed Officers B, C, D, E, and G;
  - visited the Hamilton Police Station boat shed, viewed the Police boat and rescue devices, and interviewed the Hamilton Police Boat Trainer;
  - visited the scene of Mr X's disappearance;
  - viewed Eagle footage of the search and Mr X's disappearance;
  - listened to audio recordings and reviewed transcripts of Police communications during the incident; and
  - reviewed Police investigation documents.
9. The Authority identified and considered the following issues:
  - 1) Did officers on the Police boat do all they reasonably should have to rescue Mr X from the river?
  - 2) Was Mr X under arrest and in the actual care and charge of Police when he disappeared?

## THE AUTHORITY'S FINDINGS

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### Issue 1: Did officers on the Police boat do all they reasonably should have to rescue Mr X from the river?

#### *Deployment of the Police boat*

10. At about 10.10pm on 27 April 2018, Police visited the first of several addresses Mr X was known to use. Police records show *"all units armed up and fire orders read – victim thinks potential firearm."*<sup>2</sup> At about 11.08pm, Mr X was spotted running from the back of a house towards a park with several tracks leading down to the Waikato River. A Police dog handler and Officer A tracked Mr X to bushes along the riverbank. Officer B, the acting Area Inspector, went to a location near

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<sup>2</sup> "Armed up" means officers were carrying firearms. "Fire orders" are Police instructions which set out the circumstances under which Police may use firearms.

the edge of the park, south of the search area. He began to organise officers to cordon the park and nearby streets.

11. At about 11.16pm, Officer A radioed and asked for the Police boat to be launched because *“he’s possibly gone in the river.”* At about 11.24pm, the Police dog handler radioed to say his dog kept going to the water, and he was *“99 percent sure”* Mr X had entered the river. A dispatcher from the Police Northern Communications Centre noted in the Police CARD system that the boat was required.<sup>3,4</sup> Officer B asked the dispatcher to enquire whether Fire and Emergency New Zealand (FENZ) could provide an officer with a thermal imaging camera to accompany the boat crew, and whether the Police Eagle helicopter could assist with the search.
12. As the river traverses the park, parts of the riverbank slope into the water and feature dirt walking tracks among dense bush. In other places, the riverbank is steep clay cliff-face. Not all of this terrain is accessible by land. The Police boat provided an additional perspective for searching and, if necessary, allowed for a person to be rescued from the water.
13. Officers C, D and E were in the Hamilton Police Station when they heard the call for the Police boat. They set about preparing the boat for launch. The Waikato Police boat is a small pontoon boat, measuring 4.5 metres by 2.2 metres, with a rear mounted 70 horsepower four stroke outboard engine. The boat can carry a maximum of six people, and Police policy recommends two trained boat crew operate the boat. The boat, and boat crew training, is described in more detail in paragraphs 59 to 70.
14. While the boat crew were preparing the boat for launch, Officer B gave them two instructions by radio. The first of these, at about 11.21pm, instructed the boat crew to take a Taser on the boat, and not to bring Mr X out of the river *“unless he has completely given up. He poses a great risk to taking Police into the water.”* The second instruction, at about 11.30pm, was a reminder of the risk of using the Taser around water.<sup>5</sup> This instruction included the warning:

*“The biggest risk this guy will pose will be trying to drag Police into the water to damage them in there, so make sure you’ve got a plan to how we get him out, ah, before—.”*

15. Officer C said in his statement to Police:

*“[Officer B] ... said over the Police radio ... that we were to be wary of attempting to put [Mr X] on board the boat. I remember a comment being made over the radio that there was the potential that [Mr X] may try to drag us overboard. I do not remember anything further being said at this point as I was concentrating on launching the boat.”*

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<sup>3</sup> Dispatchers allocate Police units to attend incidents and pass on relevant information to the field units.

<sup>4</sup> CARD is an electronic Police system used in Communications Centres, in which events are created and managed.

<sup>5</sup> Police policy on Taser use states that a Taser is not to be used where there is a risk of someone drowning (set out in more detail in paragraphs 88 and 89 below).

16. When interviewed by the Authority, Officer B said he heard his instructions acknowledged, so expected the officers on the boat to do their jobs. He considered the skipper to be in charge of the boat's role in the search.
17. At about 11.39pm, shortly after the boat had been launched, Officer F, a sergeant supervising some of the officers searching on land, transmitted a further warning: *"Yeah all units.... Recent [information] has been received that in March [Mr X] may have been in possession of a pistol."* The boat crew did not respond to this warning.

### *Searching for Mr X*

18. The boat launched at about 11.36pm. On the water, the boat crew focused their search on the thick bush near the place on the riverbank where the Police dog had indicated. The Police Eagle helicopter joined the search at about 11.58pm.
19. At about 12.25am, the Eagle crew spotted Mr X in the water, about 200 metres upstream from the bank where officers were searching. Officer C steered the boat south, as indicated by Eagle. Eagle footage and commentary showed that initially Mr X was moving himself along the riverbank away from the boat. He stopped once he had rounded a small point. At 12.28.02am, Officer D radioed to confirm she could see Mr X as the boat went past him. Officer E kept the boat's spotlight on Mr X. Officer C stopped the boat about 15 metres south from where Mr X was holding onto the cliff.
20. At 12.28.38am, Mr X started to swim towards the boat. Eagle footage shows Mr X leaving the bank and moving downstream, towards the centre of the river and the stationary boat, which appears to be holding into a strong current that can be seen on the water's surface. At 12.28.47am, Officer G was on the riverbank above Mr X, shouting to him. She said he looked exhausted. Over an hour had passed since Officer A first radioed to say he thought Mr X had gone into the river. Officer G told Mr X he was under arrest and he responded, *"yeah, just pick me up."* The boat crew said they did not hear this.
21. Officer G told Mr X to go back to the riverbank. Officer D radioed that the boat would keep its spotlight on him. At 12.28.55am, Officer G cut her off, radioing the boat crew, *"yeah boat, just keep an eye on him, he's coming out."* Officer D immediately responded, *"yeah, affirm, we're not getting him on board though with a firearm."* Eagle also radioed that Mr X was swimming out into the middle of the river.
22. Mr X can be seen in Eagle footage continuing to move towards the boat, but he appears to stop at 12.29.09am, 31 seconds after striking out into the river. During that time, he only travelled around six metres towards the boat. Throughout, officers on the boat can be seen standing and watching Mr X.
23. At 12.29.32, Mr X's direction of movement changes. He appears to be being pulled by the current back and towards the centre of the river. His arms cannot be seen above the water, suggesting he is not deliberately swimming in a different direction. At that point, Eagle asked if there were officers on the west bank of the river as it looked like Mr X was swimming across.

24. At 12.29.40, Officer G's voice was picked up by another officer's radio, shouting at the boat crew: *"Boat, move up to him now! He's going under!"* 62 seconds had passed since Mr X left the riverbank. Footage suggests the current pulled Mr X into a strong eddy, which dragged him beneath the surface. His head is last seen on Eagle footage at 12.29.51am. When interviewed, all three officers on the boat said Mr X was swimming away from the boat before he was pulled under the water.
25. Immediately after Mr X had disappeared, Officer C moved the boat forwards and stopped about two or three metres from the position where Mr X was last seen. Eagle footage shows the FENZ officer passing the oar to Officer E. Officer E puts the oar into the water; a futile action, given that Mr X had disappeared. The Authority notes that the oar was not long enough to reach the spot where Mr X was last seen.
26. The boat crew spent about another hour unsuccessfully searching the river for Mr X.

#### *Actions of the boat crew*

27. In order to rescue Mr X from the water, officers on the Police boat needed to:
  - assess and reassess the search as it progressed, including considering whether Mr X's safety and the risk he posed to them might change over time;
  - plan how they would rescue Mr X from the water if needed, as instructed;
  - know how to rescue a person from the water; and
  - when Mr X was found, get the boat close enough to him to rescue him from the water.
28. Officer B was appointed incident controller shortly before the boat launched, and he had overall command of the search. Officer C, as skipper of the Police boat, was the forward commander for the boat crew, responsible for assigning tasks to crew members, planning, and decision-making on board the boat.<sup>6</sup>
29. Officer C took on the role of skipper, because he had more boating experience than Officers D or E, although none of the officers had been involved in rescue operations in the Police boat. Officer C described the skipper's role to the Authority: *"Obviously I look after the boat, I guess I'm in charge of the crew."*
30. He said he trusted Officers D and E to *"do their part"* with minimal instruction. Officer E and the FENZ officer were not boat trained, however Officer C did not give them a safety briefing before the boat launched. Officer C told Officer D to operate the Police radio located in the steering console of the boat, and Officer E to operate the spotlight at the front of the boat.

#### *Ongoing risk assessment and planning for a rescue*

31. Police policy provides a framework for officers to assess, reassess, manage, and respond to incidents (refer to paragraphs 83 to 87 below). Police refer to this as the TENR (Threat, Exposure,

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<sup>6</sup> Control and command policies are discussed in more detail in paragraphs 75 to 82 below.

Necessity and Response) assessment. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved.

32. Officer E summed up the planning by the boat crew prior to launching the boat in a formal statement given to Police: *“Things happened so quickly, there was no risk assessment done as far as I can recall.”*
33. Officer C said:

*“... our plan was just to try to get observations with our spotlight or the [thermal imaging camera], and at that point we didn’t necessarily have a plan as [to] a water rescue because he wasn’t in the water then.”*
34. However, the boat was requested because the Police dog handler and Officer A thought Mr X had gone into the river (see paragraph 11). This was communicated over the Police radio a number of times during the search. In addition, Officer B had told them to have a plan for getting Mr X out of the river.
35. Officers C, D and E thought their role was limited to assisting officers on land with the search for Mr X. Officer D said Officer B’s first instruction to the boat crew (see paragraph 14) had confused her. She told Police she had radioed Officer B to clarify the instruction, but the recording and transcripts of radio communications during the search do not contain any record of this clarification being sought. In her statement to Police she said she thought *“... we were not allowed to put [Mr X] on our boat [and] that was a direct instruction from an acting Inspector.”*
36. The Authority considers the Police officers on the boat failed to make their own assessment of the incident as it developed. Instead, the officers were overly reliant on the information that Mr X may have had access to a firearm a month earlier, and Officer B’s instructions regarding the risk of being taken overboard. When Mr X was found in the water, they were unprepared for the change in their role from searchers to rescuers. Although they were on the water searching for Mr X for about 50 minutes before Eagle spotted him, they had not discussed what they might do if Mr X was found in the water and in need of retrieval.
37. Based on the records of the search and audio recordings, by the time Eagle saw Mr X, he could have been in the water for over an hour. The Authority acknowledges there is no way to determine how long Mr X was in the water with any accuracy. The dog handler identified Mr X had likely gone into the water at 11.16pm and continued searching the bushes around the beach at least until Mr X was spotted by Eagle at 12.25am. The Police dog did not pick up any further scent after 11.16pm. Mr X may have been hiding in the bushes on land for most of that time. Equally, however, he could have been in the water since 11.16pm - well over an hour.
38. Mr X was initially seen clinging to a branch coming out of a steep clay cliff that was impossible to climb, so he had no way out of the water unless the boat picked him up. Even if he had a firearm, the risk that he could use it effectively while keeping himself afloat in the strong current would have been very low. Apart from a short time when Mr X manoeuvred himself around a small point (see paragraph 19), officers on the boat had their spotlight on Mr X and ought to have recognised he was moving slowly and appeared tired, as Officer G did.

39. But the officers did not factor these matters into their TENR assessments. Officer D based her risk assessment primarily on the information from Officer F that Mr X may have had a firearm. She told Officer G that Mr X would not be getting on board the boat with a firearm, despite there being no evidence that Mr X actually had a firearm on the night in question. She told Police she could see both of Mr X's hands clinging to a branch at the foot of the riverbank but told the Authority she did not clearly see both of Mr X's hands to satisfy herself that he was not armed.

40. Officer C, in charge of the boat crew, did not think Mr X had a firearm:

*"I didn't believe he had a pistol, it [the warning] was sort of two or three weeks old and I believed if he was going to use it, he would've used it at the initial scene... a lot earlier than when he was in the water...."*

41. Nonetheless, when Eagle officers spotted Mr X in the water, Officer C had no plan to approach Mr X, taking the boat about 15 metres downstream from him. He said:

*"... I would have been comfortable putting the boat right next to him. ... But there were also constables on the boat that weren't – how should I put it – they weren't really comfortable with getting too close to him initially just because of the danger he had for us so I was sort of in the mind frame of, you know, I just wanted to look after my crew first."*

42. The Authority notes that each of the officers on the boat said Mr X was swimming away from the boat (see paragraph 26). Eagle footage shows that when Mr X first saw the Police boat, he starts moving along the bank towards it, and as the boat passes him, he starts swimming out towards the boat. The Authority accepts the officers on the boat will have had a different perspective than officers on the bank and in Eagle, and it may have been difficult to distinguish Mr X's direction of movement in the last seconds when he was stopped and pulled sideways by the current. However, when Mr X first struck out into the river, he was moving toward the boat for about 30 seconds, at an angle and pace which could not reasonably have been construed as 'swimming away'.

43. Officer C, as skipper, should have taken a broader view of the search operation as it progressed and used the boat and crew accordingly. He needed to lead the crew, as forward commander on the boat (see paragraph 29), including instructing the other officers to use the equipment if needed, getting the boat to a position where rescue equipment could be used, and making plans for retrieving Mr X from the water once he was found.

44. The Authority notes there were rescue options on the boat that did not require Mr X to be immediately brought on board, such as throwing him the rescue tube to help him stay afloat, or taking the boat to him and having him hold on to the strops attached to the boat while the officers assessed whether Mr X still posed a physical threat.

45. Instead, Officers C, D and E each referred to the oar on board as rescue equipment. The oar is not rescue equipment, as it poses a risk of hitting a submerged person. Oars are kept on the boat in case the engine fails (see paragraph 62). In any event, officers did not put the oar in the water until Mr X had disappeared below the surface.

46. Officers C and D were boat trained and should have known what rescue equipment was available and how to use it. Officer E was not boat trained, but was placed in the front of the boat, the best location to access and use rescue equipment. Officer C should have briefed Officer E on the use of the rescue equipment and instructed Officer E to deploy it when Mr X was found.
47. Even if Officer E had known how to use the rescue equipment, the Police boat was too far away from Mr X to make use of it. The situation called for the Police boat to be closer to Mr X to allow effective rescue options to be deployed.
48. Waikato Police boat training at the time of this incident covered the theory of live rescues, and practised deploying the rescue equipment. Officers cannot practise rescuing a live person from the water due to the risks involved (see paragraph 69).
49. The Authority is not satisfied that Officers C, D and E were adequately trained or sufficiently experienced to manage a rescue operation. The officers on the boat were overly focussed on earlier warnings and instructions from senior officers instead of making their own risk assessments and planning for the possibility of finding Mr X in the water. Officer C did not show the leadership needed as the search operation developed into a rescue and, critically, placed the boat in a position that made it impossible to rescue Mr X from the water.

#### FINDING ON ISSUE 1

Officers on the Police boat did not do all they reasonably should have done to rescue Mr X from the water.

#### Issue 2: Was Mr X under arrest and in the 'actual care and charge' of Police when he disappeared?

50. Police have a legal duty to protect people in their 'actual care and charge' from injury, under section 151 of the Crimes Act 1961 (see paragraphs 96 to 99 below). A person who has been arrested is under the care and charge of Police for the purposes of section 151. An arrest requires Police to:
  - make a person aware that they are under arrest, by an officer's words or actions, and
  - restrict the free movement of the person, taking them into custody.
51. Officer G told Mr X he was under arrest, and Mr X apparently accepted this (refer to paragraphs 20 and 21 above). Mr X started to swim out into the river and, although Officer G told Mr X to swim back to the bank, she was not able to make him do this. He continued towards the boat and into the river's strong current. Officer G, who remained on the riverbank, was not able to complete Mr X's arrest by restricting his free movement. Therefore, Mr X was not under arrest at this time.
52. The officers on the Police boat were in the best position to complete Mr X's arrest by taking him into their custody. However, they did not hear Officer G and Mr X, and were not aware that Mr X had given up trying to escape Police when he went under the water. They cannot reasonably have had 'actual care and charge' of Mr X at the time he disappeared.

53. For this reason, Police were not under a legal duty to protect Mr X from injury.
54. However, whatever the legal position, the Authority considers the actions of the officers in the Police boat fell short of the standard expected of Police officers in these circumstances. It is concerning that all officers on the boat told the Authority Mr X was swimming away from them immediately prior to his disappearance under the water, without acknowledging that he was initially moving towards the boat. Although the officers did not have a legal duty to rescue Mr X from the water, having undertaken a water-based role in the search there arose a moral duty to take positive action to keep Mr X safe when he was found in the water. Instead, when Mr X began swimming towards the Police boat, the officers did nothing until Mr X had gone under the water.

#### FINDINGS ON ISSUE 2:

Mr X was not under arrest, and therefore not in the actual care and charge of Police when he disappeared. However, officers had a moral obligation to take positive action to rescue Mr X from the water.

#### SUBSEQUENT POLICE ACTION

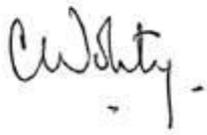
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55. Police conducted a review of the Police boat operation and training for Waikato District in the latter part of 2018, but not as a result of this investigation. It was determined the Waikato Police boat was fit for purpose but was going to require updating in the near future, and the training regime needed to be reconsidered.
56. The training regime, including the Maritime New Zealand training and vessel documentation, has subsequently been updated. Amendments to the vessel manual include who can be carried on board the boat in addition to Police staff, and what safety briefing those people must be given. A better propeller guard has been fitted, and a boat hook is now carried as part of the on-board safety equipment.

## CONCLUSIONS

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57. The Authority found that Officers C, D and E did not do all they reasonably should have done to rescue Mr X from the water. Officers C, D and E were not adequately trained or sufficiently experienced to manage a rescue operation. The officers on the boat were overly focussed on earlier warnings and instructions from senior officers, instead of making their own risk assessments and planning for the possibility of finding Mr X in the water. Officer C did not show the leadership needed as the search operation developed into a rescue. None of the officers considered appropriate rescue options, but in any case, Officer C decided to place the boat in a position that made retrieving Mr X impossible.
58. The Authority also found that Police were not under a legal duty to protect Mr X from injury at the time he disappeared underwater, but that a moral obligation to help Mr X arose from the nature of the operation, and officers did nothing to help him when needed.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

12 March 2020

**IPCA: 17-2253**

### The Waikato Police boat

59. The Waikato Police boat, based at Hamilton Police Station, is primarily used for search and rescue operations. It is a small pontoon boat; measuring 4.5 metres by 2.2 metres, with a rear mounted 70 horsepower four stroke outboard engine. The boat can carry a maximum of six people, and Police policy recommends two trained boat crew operate the boat. When fully occupied, there is little room for those on board to move about.



*The Hamilton Police boat. The central console contains the boat controls and the Police radio.*

60. The steering console is placed centrally, and there is a radio mounted to the console.
61. The boat carries the following rescue equipment:
- Ropes and strops fitted to the exterior of the boat, to allow a person in the water to hold onto the boat before being brought aboard.
  - A rescue tube (similar to that carried by surf lifesaving crews), modified into a 'U' shape, which can be thrown to a person in the water assist with buoyancy.
  - A weighted throw rope can be used to help pull a person in the water closer to the boat to enable their rescue.
  - A spotlight can be mounted to assist with searches.
62. Safety equipment on the boat includes a spare lifejacket, intended for a person rescued from the water. A set of oars is on board in case the outboard motor fails.

63. Rescue and safety equipment is stored in lockers on each side of the boat. Both port and starboard lockers are clearly labelled with the contents of each locker.
64. Lifejackets for the crew are kept at the Hamilton Police Station with the boat. Officers crewing the boat are required to remove their boots, their stab resistant body armour (SRBA) and appointments, as the weight would be dangerous if an officer went into the water.
65. The boat is transported between the Police Station and the nearby boat ramp on Grantham Street using a small John Deere tractor and trailer.

### Waikato Police boat crew training

66. At the time of the incident, approximately 50 officers in the Hamilton Police Station were trained as boat crew. Those officers volunteered to be trained as boat crew, and most had previous boating experience, recreationally or commercially. The rationale for having so many trained officers was to ensure there was an *“immediate response capability”* on any shift without needing to call in any off-duty staff.
67. Training is based on the requirements of Part 35 of the Maritime Rules, which focusses on boat operation and safety (discussed further in paragraphs 93 and 94 below). One officer in the Hamilton Police Station was responsible for training all officers who were selected as boat crew. Because of the large number of staff trained to operate the boat, each boat crew member receives eight hours of training a year, delivered in a single day. All training takes place in daylight hours.
68. Training is focussed on operating the boat, including manoeuvrability and managing the specific hazards of the Waikato River. Emergency processes such as mechanical failures or fires are addressed as required by the Maritime Rules.
69. Training covers the use of rescue equipment and retrieving people from the water. All the rescue equipment is unpacked and the use of each piece of equipment is discussed. Officers practise throwing and retrieving flotation devices. Due to health and safety concerns, officers cannot practise rescuing a live person, and a floatation device is recovered in lieu of a person. There is also training on recovery and management of dead bodies, as a high proportion of Waikato Police boat deployments relate to deaths in the water.
70. The skipper of a boat is always responsible for those on board, including ensuring they have lifejackets and are otherwise safe. In a Police context, the skipper is effectively a forward commander, having charge of the boat crew. However, there is no specific policing element to the training. Matters such as control and command, the role of skipper as forward commander, and the specific policing roles of boat crew are not addressed.

### Arrest without a warrant

72. Section 50 of the Domestic Violence Act 1995 gives Police officers the power to arrest a person without a warrant when the officer has good cause to suspect the person has contravened a protection order or has failed to comply with any condition of the protection order.
73. Section 32 of the Crimes Act 1961 provides justification for an officer to arrest a person without a warrant when:
- Police have the legislative authority to arrest a person without a warrant (such as under section 50 of the Domestic Violence Act 1995), and
  - the officer believes, on reasonable and probable grounds, the person has committed the offence.
74. This power exists whether or not the offence was committed and whether or not the arrested person committed it.

### Control and command

75. Police have adopted the Coordinated Incident Management System (CIMS) as the model for command, control, and coordination of emergency incidents in New Zealand. From time to time, Police may partner with other agencies under this model to respond to an incident.
76. ‘Control’ refers to the responsibility for coordinating and directing the response to an incident. Control sets priorities and objectives and determines how best to implement them. This can include assigning tasks to another agency and coordinating that agency’s wider actions, so it integrates with the wider response.
77. ‘Command’ refers to the authority a Commander in the New Zealand Police lawfully exercises over assigned staff by virtue of rank or assignment. Command includes the authority and accountability for effectively using available resources and for planning, organising, directing, coordinating, and controlling Police resources.
78. The CIMS model describes five response levels, depending on the scale of the event:
- Community (business-as-usual);
  - Incident;
  - Local (events affecting a Police district);
  - Regional (events affecting more than one Police district); and
  - National (events requiring a whole-of-government response, such as the 2011 Christchurch earthquake, or a terrorist attack).

79. Different response levels are activated as the event grows in seriousness and scale. The lower-level response is supported and/or coordinated from the next-higher level, when this is activated.
80. A 'Controller' is responsible for coordinating and controlling the response at each level.
81. Controllers and Commanders must be competent, trained, and qualified for their respective roles. Control and command is role rather than rank specific. Officers of a senior rank nominated to take a control or command role should not automatically assume superiority, solely on the basis of rank or territorial responsibility.
82. Most incidents will be responded to following a report to the Communications Centre. The Shift Commander of the Communications Centre will take initial control until an operation or tactical commander in the field can safely be handed incident control at the appropriate time.

### Risk assessment and decision-making

83. Police policy provides a framework for officers to assess, reassess, manage, and respond to incidents. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment. TENR supports the timely and accurate assessment of information directly relevant to the safety of Police and others. The response to any given situation must be considered, timely, proportionate, and appropriate.
84. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA). PCA is a constable's subjective assessment, and continuous reassessment, of an incident using the TENR model based on information known about the situation and the subject's behaviour.
85. Police must apply TENR assessment methodology to all policing situations that involve risk and have the potential to cause harm. TENR assessments must be carried out in conjunction with the relevant police manual chapters or policy.
86. TENR is composed of Threat, Exposure, Necessity and Response.
  - *Threat*: Any individuals or any acts or anything likely to cause harm.
  - *Exposure*: Potential for harm to people.
  - *Necessity*: Is about your decision whether or not to respond to a given situation.
  - *Response*: must consider all the circumstances and must be timely, appropriate, and proportionate.
87. The overriding principle when applying TENR is 'safety is success'. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.

## Use of a Taser

88. Police policy states 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 who is assaultive (defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”*) and cannot be used on a person who uses passive resistance in relation to Police.
89. The policy states: *“Do not use the TASER on subjects in or near water if there is a risk of them drowning.”* A person incapacitated by a Taser will not be able to support their own body in water.

## Policing in the maritime environment policy

90. The ‘Policing in the maritime environment’ policy sets out the operational requirements for Police employees using or operating a Police or civilian owned vessel. The policy refers to the Maritime Rules (the Rules) made under the Maritime Transport Act 1994.
91. Police vessels operate under the New Zealand Police Maritime Transport Operator Certificate, issued under Part 19 of the Rules.
92. Police are authorised to issue certificates to crew under Part 35, subpart D of the Rules. Rule 35.72 prescribes the training framework requirements for industry specific certificates. By maintaining authorisation to issue certificates under subpart D of Part 35 of the Rules, Police can train and certify staff to operate boats under six metres in length, without those staff members each needing to maintain Seafarer Certification.
93. Rule 35.72 sets out the requirement for a training framework. This framework forms the basis for the training provided to Waikato Police boat crew, along with the safe operating procedures set out in the appendix to rule 19. These rules prescribe requirements relating to the safe operating of vessels and include emergency procedures such as person overboard.
94. The Waikato Police boat training includes some additional content specific to Police; however, this is limited to operating the Police radio on board, deployment of Police divers, and recovery of dead bodies. It does not cover control and command, or arrest of people in the water.
95. The ‘Policing in the maritime environment’ policy sets out responsibilities of Police when transporting people in Police detention on Police vessels. This includes the requirement to carry out a TENR risk assessment to determine the safety and security requirements for transporting detainees on a Police vessel. The policy notes: *“If the detainee is considered dangerous then arresting staff or local Police staff may be required to assist with the transport.”*

## Duty of care - Crimes Act 1961

96. Section 151 of the Crimes Act 1961 states that everyone with *“actual care or charge”* of a vulnerable adult is under a legal duty to provide that person with necessities and to take reasonable steps to protect that person from injury.
97. The Act defines a ‘vulnerable adult’ as *“a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person.”*
98. Failing to fulfil this duty may be sufficient for criminal liability where there is a resulting death or injury, or where there is a risk of harm, by way of criminal nuisance, manslaughter, injuring (where, if death had occurred, there would be liability for manslaughter), or ill-treatment of a vulnerable adult.
99. Under section 150A(2) of the Crimes Act, liability for any of these offences will only arise if the failure is *“a major departure from the standard of care expected of a reasonable person”*. This is commonly referred to as a gross negligence standard.

## 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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