

# Tauranga shooting of a man in defence of hostages justified

## Summary of the Incident

1. At about 2.55pm on Sunday 24 November 2019, Mr W was shot dead by Police in Tauranga. He had held his two daughters, aged six and four, hostage for the preceding 15 hours.
2. Mr W had attended a party with his partner and his two children on the Saturday night, at which he had been involved in a fight and several altercations. When they arrived home Mr W barricaded his partner, Ms Z, and the children inside and threatened Ms Z with a knife. Ms Z escaped and called the Police at about 12.20am on the Sunday. One of his threats to her was to the effect that she would be the reason his children would die that night.
3. The initial Police responders found Mr W barricaded in the wardrobe of an upstairs bedroom and holding a knife to one of his children. He swiped the knife at attending Police. They were unable to negotiate with him and made the tactical decision to withdraw, taking with them Mr W's brother (Mr Y) and Mr Y's 11-year-old son, who they found in the same bedroom as Mr W and his daughters. As Police withdrew, Mr W followed them partway down the stairway. He had one of his daughters in front of him and was holding a large knife up to her throat. He began to count down, implying that if Police did not leave, he would hurt the child. Police left the house and Mr W retreated back to an upstairs bedroom. Officers established a cordon and attempted to appeal to him to release the children.
4. The initial responders remained outside the house and requested the support of the Armed Offenders Squad (AOS) at about 1.15am. AOS and the Tauranga Police Negotiation Team (PNT) arrived on scene at about 2.20am and the PNT started negotiating with Mr W. They made little headway and at about 9.15am two of the Advanced PNT who cover the area arrived.
5. The Northern Special Tactics Group (STG) was notified of the incident at about 3am. The STG arrived by road from Auckland at about 6.50am.
6. The Police negotiators tried a number of tactics to persuade Mr W to release his daughters and give himself up. By 1.30pm St John Paramedics expressed concern about the health of the two children due to the potentially very high temperatures in the room in which they were held, and their lack of food or water since the incident began. They advised that children were particularly

susceptible to dehydration and overheating, which could result in a comatose state. Police had not heard any sounds from the hostages for some time. The negotiation team had not had any success in building rapport or influencing Mr W despite the range of techniques they used. This combination of factors led the Incident Controller, in consultation with the other commanders present, to order an operation to rescue the hostages about 15 hours after the hostage situation began.

7. During this STG-led operation, Police used multiple entry points into the house, including an external first floor window using a specialist STG ladder. The ladder team confronted Mr W while their colleagues were simultaneously breaking through the bedroom door from inside the house.
8. Mr W held a large knife at his daughter's throat and, despite warnings, he would not put the weapon down.
9. An officer at the bedroom door (Officer P) attempted to taser Mr W but it appeared to have no effect. An officer on the ladder (Officer Q) then fired a single shot from a Glock pistol that struck Mr W in head.
10. The children were rescued and were immediately taken from the house and given first aid.
11. Mr W was given immediate first aid by STG and AOS members until a paramedic confirmed that he was dead.

## Issues examined by the Authority

- Issue 1:** Was the control and command of the hostage situation appropriately planned and conducted?
- Issue 2:** Was the Police negotiation of the hostage situation appropriately planned and conducted?
- Issue 3:** Was the decision to enter the address to rescue the hostages necessary and justified?
- Issue 4:** Was the use of force when securing the release of the hostages justified?
- Issue 5:** Was the family liaison appropriate during the crisis?

## The Authority's Findings

12. The Authority found that the decision to enter the bedroom to rescue the hostages was justified. We also concluded that:
  - 1) the use of force when securing the release of the hostages was justified;
  - 2) control and command of the hostage situation was, in general, well planned and conducted;

- 3) the Incident Controller should have ensured the children’s welfare by passing them food and water by any means possible until they could be rescued;
- 4) the Police negotiations during the hostage situation were appropriately planned and conducted; and
- 5) the appointment of a designated family liaison officer at the scene would have benefited both the children’s family and the Police operation.

## Analysis of the Issues

### ISSUE 1: WAS THE CONTROL AND COMMAND OF THE HOSTAGE SITUATION APPROPRIATELY PLANNED AND CONDUCTED?

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#### Arrival of Police officers at the scene

13. Officer A coordinated the initial response and was the first Incident Controller.<sup>1</sup> The Northern Communications Centre (NorthComms) had informed the first units that there was a female who had been threatened by her partner with a knife and had fled the address. She had also told NorthComms that Mr W had said to her something along the lines of: *“if my kid dies tonight it will be her fault.”*
14. Officer A met with Ms Z at the top of the driveway, as poor reception hindered phone and radio communication from the address. She told Officer A that at one point, Mr W had picked up his four-year-old child and she thought that he might hurt her. This information, combined with Officer A’s belief that Mr W might still be at the address despite no sign of anyone being home, prompted his decision to enter the house under sections 8 and 14 of the Search and Surveillance Act 2012.<sup>2</sup>
15. After confronting Mr W upstairs and making the tactical decision to withdraw, Officer A then notified NorthComms that there was now a hostage situation and asked them to notify the AOS. Other officers arrived as described at paragraphs 4 and 5. The Western Bay of Plenty Area Commander arrived at 7.20am and took over the role of Incident Controller.
16. We find that there was a clear command structure in place at the start of the incident. Officer A was the Incident Controller, effectively managing his team, carrying out a risk assessment, requesting the support of other staff when the scale of the situation became clear and providing comprehensive updates to these staff so they had an understanding of the situation before they arrived on the scene.

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<sup>1</sup> The Incident Controller is responsible for managing an entire incident so that appropriate planning occurs, resources are effectively deployed, and risks are properly assessed.

<sup>2</sup> These sections are set out at paragraphs 97 and 98.

## Control, command and coordination of AOS, PNT and STG

17. All officers were clear that, even though it ultimately became an STG-led operation, the Incident Controller had overall command of the incident at the scene. The other members of the leadership team were the:

- AOS Commander, responsible for AOS officers and tactics;
- STG Commander, responsible for STG officers and tactics;
- PNT Coordinator, responsible for PNT members and tactics; and
- PNT Coordinator Assist, assisting the PNT Coordinator with managing members and tactics.

As a District operation, the District Commander had overall command, and was kept updated by those at the scene.

18. Guidelines for the control and command of incidents are set out in Police policy, extracted at paragraphs 102 to 104. We find that there was a clear command structure in place and there were many commendable aspects of the control and command.

19. We are satisfied that throughout the incident, commanders were proactively managing the fatigue and sustenance of their staff, as well as conducting contingency planning by putting in place relief personnel, should the situation become protracted.

20. We have viewed evidence of thorough planning and preparation throughout the incident, including the AOS, STG and PNT logs and text messaging, which was a key method of communication between forward groups and the incident control point.

### *Contingency planning and decision making throughout the incident*

21. All elements of the Police response were clear in their common goal to secure the release of the hostages, either if the opportunity to do so arose because Mr W became separated from the children, or if it became necessary to do so because the children were at risk of serious injury or being killed. It is clear to us that all officers at the scene were focussed on the welfare of the children throughout the incident. While the AOS and STG Commanders had contingency plans in place in case it became necessary to conduct an entry, PNT negotiations with Mr W were the primary course of action followed to achieve the release of the hostages.

22. The progress of negotiations and the range of tactics employed by the negotiators are set out from paragraph 29. Up until about midday, the negotiators were focussed on trying to convince Mr W to allow his children to leave the upstairs bedroom because they appreciated the risks to the children if they remained in the bedroom.

23. One of the ways they attempted to achieve this was by trying to persuade him to allow one or both of the children to come out to retrieve food or water. Mr W was uncooperative and refused to allow this. Then, just after 12pm, he did ask for food for the children, saying that he would lower a rope out the window and Police could attach a bag containing cereal, milk and bowls.<sup>3</sup>

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<sup>3</sup> The log of PNT negotiations records the time of this request.

The primary negotiator (Officer N) passed this request through to commanders. Officer N continued to try to persuade Mr W to let the girls out to go to the toilet and get food and water. When lunch was brought in for officers at the scene it was also offered to Mr W and the children, with Officer N asking that he send a child out to retrieve it. He refused to do so. We also understand that Mr W was very suspicious of any attempt to persuade him to open the bedroom door. When he asked a second time for food and water to be sent via a rope through the window, he was told Police would not use this method.

24. Officer N's statement to Police says:

*"[Mr W] requests food. Wants this sent up via the window again.*

*Inform him that the boss has made a decision, and that we will not be bringing food to him in this way."*

25. Police instead continued to appeal to Mr W to release the children and open the bedroom door because bottles of water had been thrown upstairs onto the landing just outside the door.
26. The decision to refuse to pass food and water in the manner requested by Mr W was a critical one, given that as far as Police were aware, the children had had no food or water since at least midnight and it was a very hot day. While we have found that, in general, there was excellent communication, coordination and deliberate decision-making among the leadership team throughout the incident, we have struggled to find any documented evidence of a thorough appreciation process relating to this particular decision, or even to understand who made the decision. It appears from talking to all members of the leadership team that the suggestion that the children be given food and water was discussed, but for a decision as critical as this one, we would have expected to see documented advantages and disadvantages of each course open to Police, and a rationale for deciding on their chosen course. Police control and command policy sets out best practice for this appreciation process and is set out at paragraph 104.
27. While everyone at the scene was rightly focussed on achieving the release of the children, we would have expected the Incident Controller to develop a contingency plan ("Plan B") to ensure the welfare of the children if the negotiators were not able to persuade Mr W to release them ("Plan A"). The PNT Coordinator and PNT Coordinator Assist appear to have been instrumental in not further exploring the rope option, and this reflects the categorisation of food and water as part of a negotiation strategy. Our view is that it was the responsibility of the Incident Controller to look beyond negotiating tactics to a contingency plan to protect the wellbeing of the children until they were released or rescued. This included the provision of the reasonable necessities of life such as food and water.
28. As events unfolded, it was shortly after Mr W's request was refused for a second time that the negotiators believed he had fallen asleep. Medical advice then came in about the impact of heat and dehydration on the children and the Incident Controller, in consultation with the leadership team, made the decision for Police to enter the bedroom. The PNT Coordinator and the Incident Controller tell us that these events ultimately overtook the option of passing food or water through the window. The way this final decision was made is set out from paragraph 58.

## FINDINGS ON ISSUE 1

The control and command of the hostage situation was, in general, well planned and conducted.

The Incident Controller should have ensured the children's welfare by passing them food and water by any means possible until they could be rescued.

## ISSUE 2: WAS THE POLICE NEGOTIATION OF THE HOSTAGE SITUATION APPROPRIATELY PLANNED AND CONDUCTED?

29. After the initial responders retreated downstairs, they continued to try to reason with Mr W from the front door. Officer J says in his Police statement that he attempted to maintain a dialogue with him, trying to convince him to let the children go, but did not make any progress:

*“he was saying ‘you had better get out, this is my last stand’. He yelled this at us for about 2-3 minutes while I tried to speak with and reason with him. Every time I started to speak, he would yell the same thing over and over.”*

### Early negotiations by the Tauranga PNT

30. The Tauranga PNT, led by Officer E, received a briefing from the AOS Commander before arriving at 2.20am. The operation of PNT is governed by Police policy, which is extracted at paragraph 106.<sup>4</sup>
31. The primary negotiator was Officer L. He was supported by Officer E and another negotiator (Officer M). They positioned themselves at the bottom of the stairs inside the house and recommenced negotiations.
32. Officer E described Mr W as being *“agitated, angry and resistant to any engagement”*, and insisting on his partner, Ms Z, coming to the house. From this early stage Officer E was aware that Mr W was intoxicated and may have been under the influence of methamphetamine.
33. After about one hour of attempts by Officer L to negotiate, Mr W went silent. At about 3.50am, Officer E made the decision for Officer M to take over as lead negotiator and try a different approach because that used by Officer L appeared to aggravate Mr W. This shows the PNT's willingness to try different negotiating strategies to establish rapport with Mr W. When Mr W did not respond, Police concluded that he was probably sleeping. They decided to let him sleep, in the hope that as any alcohol or drugs left his system, he might become more rational and open to negotiation. When it became evident that he was not sleeping but was still not responding to calls or face-to-face appeals, Police attempted to contact Mr W via social media.

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<sup>4</sup> A Police Negotiation Team (PNT) is a specialist team formed to help other operational staff resolve situations by using negotiating tactics and techniques and is an independent specialist squad. PNT exists to provide skilled, trained and experienced negotiators to assist in the resolution of high-risk incidents without loss of life, injury to any person or damage to property.

When they got a response from him requesting that Ms Z come to the house, they made it clear that for safety reasons she would not be sent in.

34. The PNT continued to attempt communication with Mr W, mainly by phone. He continued to resist engagement other than to repeat his demand that Ms Z come to the scene. Meanwhile, Officer E maintained communication with the Advanced PNT members, receiving advice on negotiating tactics from the PNT Coordinator Assist who was travelling to the address.

### Gathering of information about Mr W to inform negotiations

35. At about 2.30am Officer E stepped back from the immediate negotiations to focus on planning and strategy. This included gathering information about Mr W's relationship history and the events leading up to the incident, in order to better understand his personality and temperament. At about 7.45am he tasked one of his negotiators to obtain more information about Mr W's criminal history.
36. Just after 8am Police obtained Mr W's mental health and substance abuse history from the Mental Health Crisis Team, including information that he was currently injecting a course of steroids. This was significant because of evidence that steroid use can cause problems with anger management.
37. The Advanced PNT (the PNT Coordinator Assist and PNT Coordinator) arrived and received a full briefing at about 9.15am. Throughout the morning, further information was made available to the Police negotiators, including that Mr W suffered from significant mood swings and aggression and had assaulted his children in the past.

### Negotiations by the Rotorua PNT from about midday

38. The Rotorua PNT arrived and, after receiving a handover, relieved the Tauranga PNT at about 11.50am to ensure that fatigue did not hinder the negotiation plan. The three members of the Tauranga PNT remained on the scene in a support and advisory role.
39. We have spoken with Officer N, a negotiator from the Rotorua PNT who took over from Officers L and M as the primary negotiator. She says that Mr W responded to her from early in her negotiations, albeit in a verbally aggressive way. She continued to convey the key message that Police's aim was to get the children out of the house. In her Police statement she says:

*"Throughout the whole negotiation, [Mr W] is the same, he does not engage fully, at times speaks with childlike argumentary responses, he at times deliberately speaks over the top of me and attempts to bait me into arguing with him.*

*He is unreasonable with his responses, with regard to the care and welfare of both children."*

### Mr W's request for food for his children

40. Officer N states that Mr W refused to allow his youngest daughter out to go to the toilet, but that he did ask for cereal and milk to be passed up, as detailed at paragraph 23.

41. Officer N says that after further negotiation, she then ceased to hear any noises from Mr W or the children for a period. After a break, she received another brief response but then was met by extended periods of silence from both Mr W and the children. When he started to engage again, Officer N tried to point out that Police were concerned about the welfare of the children because of the heat, and their lack of food, water and toilet facilities, but she states that Mr W “*gives the impression that he does not care at all for his children, or their welfare*”. This is an impression that other officers at the scene also conveyed to us, and that was factored into their decision-making during the incident.

### Negotiation strategy and goal

42. The Police negotiators consistently say in their statements to Police and their interviews with the Authority that the primary goal of negotiations was to get the two children released unharmed from the address, and for Mr W to then surrender safely to Police.
43. The PNT Coordinator Assist summarised for us the broad range of tactics and approaches that the Police negotiators used over the course of the incident.

### Third party intermediaries and non-Police negotiators

44. Some members of Mr W’s family have complained to us that they should have been given the opportunity to speak directly with him, or even send Police away and use a local iwi or a community Māori (non-Police) negotiator or family member to talk with him. We have considered these complaints in the context of all of our investigations and interviews with subject officers.
45. When a family member or friend of the subject is used in Police negotiations, they are known as third party intermediaries.
46. From early in the negotiations Mr W insisted that Ms Z be brought to him. Police decided that this was not a wise course because there were indications that if she was brought to him, he might hurt or kill himself in front of her. They made this assessment through a combination of their past experience, knowledge of good practice, training and comments made by Mr W suggesting that Ms Z might be responsible for his death.
47. At 3.20am, Officer E received a phone number for Mr W’s sister, Ms X. Officer E spoke with Ms Z in person, to gain a better understanding of Mr W’s relationship with Ms X, as well as his personality and the events leading up to the incident. This conversation led him to believe that Ms X might not be suitable as a third party intermediary.
48. At 4.51am, Officer E met with the rest of the negotiating team and discussed the potential to get a recorded message from Mr W’s mother if there was no progress later in the morning, and possibly even to put her on the phone to Mr W. Officer E noted that the introduction of Mr W’s mother would have to be balanced against what his reaction was likely to be, for example if he felt that he had lost the respect of his mother.



49. Just before 10am, Police played a recorded message from Ms Z to Mr W repeatedly over a loudspeaker. In the message Ms Z stated that she wanted to see him but that he would have to come out of the house first.
50. Officer E contacted Mr W's martial arts instructor, who he understood to be a mentor to him, and explored the possibility of using him as a third party intermediary. At about 11am, the PNT spoke to the instructor and recorded a voice message. Officer E states that he considered allowing him to speak directly to Mr W, but decided against it because English was not the instructor's first language and because he would need to be coached to ensure that he stayed on message. Police decided that in the first instance, a voice message should be recorded and played to Mr W to see how he reacted, before considering whether to put the instructor on the phone directly. The message was played repeatedly to Mr W over the loudspeaker.
51. Police policy states: *"People who know a subject may believe they are the best people to do the negotiation. This is usually not the case."*<sup>5</sup>
52. The PNT Coordinator Assist told us the following regarding third party intermediaries:
- "I'm not aware personally of any jurisdictions internationally that use [third party intermediaries] as a matter of course. They are a tool in the toolbox of negotiation... I have read case studies of placing persons into third party intermediaries that've gone wrong in terms of what the reaction of the subject has been like... sometimes in the right situation it can have an effective result."*
53. We also spoke to the PNT Coordinator Assist about the possibility of Police withdrawing from the scene to take the pressure off Mr W. He says that he did consider this as an option, but ultimately decided that it was too risky, given the presence of two children inside. We also asked him about bringing in a Māori elder, or Kaumātua, in a situation such as this. He explained that, while he sees the potential to bring in people like this in the future, given the risks involved (here, a man holding a knife and with two child hostages) it would only be in an advisory position for the Police negotiators. We understand that there are not currently any trained Māori non-Police community negotiators.
54. The Authority is satisfied that the commanders and Police negotiators at the scene did fully consider the use of third party intermediaries in trying to resolve the situation. Their decision to use pre-recorded messages rather than direct communication was based on a comprehensive assessment of the risks, and their approach was in accordance with Police policy. We note that there may be scope in the future to increase the role of non-Police Māori community members in an advisory position.

### *Māori Police negotiators*

55. Two of the primary negotiators during the incident were Māori: one male and one female. We asked their views on why an iwi liaison officer was not called.<sup>6</sup> They responded that they were confident that Mr W would have recognised that they were Māori, but that he showed no

<sup>5</sup> Policy is set out more fully from paragraph 108.

<sup>6</sup> An iwi liaison officer is a Police officer or employee who helps Police to navigate cultural issues and improve Police relationships with Māori.

indication that he was in touch with his language or culture. They explained that they take their cultural cues from the subject, for example in noticing his pronunciation of Māori words. One of the officers gave us an example of a negotiating situation where she did call an iwi liaison officer to help resolve an incident, but says that in this case there were no signs from Mr W that it would be effective to do so.

### *Complaint from family*

56. One of Mr W's relatives has complained to the Authority that if Mr W had not been Māori, the incident would have had a different outcome. He perceives that Mr W's whānau lacked any voice or influence over potential strategies that Police could consider when dealing with Mr W, and that Police did not conduct the operation with the intent of achieving a peaceful outcome.
57. It is clear to us that Police were consistent in their goal of resolving this situation peacefully. We are also satisfied that, in this particular incident, the negotiating strategy was appropriate. We do, however, think that improved family liaison during the incident may have helped to alleviate some whānau concerns. This last point is dealt with further in Issue 5 at paragraph 94.

## FINDING ON ISSUE 2

The Police negotiations during the hostage situation were appropriately planned and conducted.

## ISSUE 3: WAS THE DECISION TO ENTER THE BEDROOM TO RESCUE THE HOSTAGES JUSTIFIED?

58. At about 1.30pm, the PNT advised the commanders that Mr W was asleep. The Incident Controller and the AOS and STG Commanders agreed that there would be advantages to using that as an opportunity to rescue the children.<sup>7</sup> This appeared to be a key factor in the first decision to execute the plan to enter the bedroom, as they hoped to take the opportunity for an STG member to taser the sleeping Mr W from the top of the ladder positioned at the window. That initial action was aborted when Mr W closed the upstairs window at about 2.20pm.
59. The final decision to enter the address to rescue the children was made by the leadership team at a meeting at about 2.40pm. Present at that meeting were the Incident Controller, commanders from the AOS (the AOS Commander and Officer O), the STG Commander and the Advanced PNT (PNT Coordinator and PNT Coordinator Assist), representing all the key staff present at the address. The final decision to proceed with the plan to rescue the children rested with the Incident Controller, with advice from the other commanders. The STG Commander directed his staff to execute the plan not later than 2.55pm.

### Factors taken into account when deciding to enter

#### *Impact of heat and dehydration on children*

60. The incident occurred on a hot day in Tauranga. Mr W and the children were barricaded in an upstairs bedroom of the house, which was an A-frame with a steel roof. AOS and STG members who were positioned inside the other upstairs bedroom observed that it was so hot up there

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<sup>7</sup> According to the Police statement of the STG Commander.

that they needed to take turns to go to the open window to breathe.<sup>8</sup> After the incident, while the paramedics were at the scene, the AOS Commander directed that temperature recordings be taken in the bedroom. By this stage the door and window had been open for a while and there was a significant draught. Temperatures of between 30 and 38 degrees were measured in different parts of the room. The Incident Controller described the effect of the heat on himself in his statement: *“I was dehydrated, had a significant headache and was having trouble keeping water down”*. We therefore accept that it was very hot in the bedroom where Mr W was holding the children.

61. As far as Police were aware, the children had no food or water inside the bedroom for the duration of the 15-hour negotiation. After the operation Police did find a two-litre orange juice bottle still partially full.
62. An officer at the scene spoke to St Johns Ambulance personnel at 1.30pm to ask their advice on the likely impact of heat and dehydration on the children. The ambulance officers expressed their concern, and just before 2pm the Incident Controller directed that Police again speak to them and inform them that the children had been asleep for two hours. He told us that the advice he received was:

*“the children would appear asleep but could be unconscious. [Mr W] would be unlikely to know they were unconscious. It could lead to organ failure as the body shuts down. Children could succumb to the effects of heat very quickly.”*

63. Similarly, the PNT Coordinator says that the advice they received from the ambulance officers was:

*“if a child of their age reaches a hyperthermic state with a body temperature of 39 degrees or higher and remains at this temperature for more than an hour there is a 60% mortality rate.”*

64. At the time Police received this advice, Mr W could be heard snoring and Police thought that the children were asleep too. This increased the commanders’ fears that the heat was starting to have an adverse effect on the wellbeing of the children. At about 2.20pm, Police noticed that the window which was previously open had been closed, meaning that there was now no ventilation in the room where the children were held.
65. The STG Commander says that the threatening medical condition of the children placed his subjective assessment of the risk within the range of grievous bodily harm or death.

#### *The threat that Mr W posed to the children*

66. The STG Commander states that one of the factors the commanders considered at the 2.40pm meeting was Mr W’s comment to Ms Z at the start of the hostage situation, that she would be the reason his children died tonight. He says that this, combined with the negotiators’ observations that he seemed largely indifferent to the welfare of his children, meant that they continued to be concerned that Mr W may try to harm his children.

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<sup>8</sup> According to the Police statement of the Incident Controller.

### *Mr W's violent history and mental health concerns*

67. The STG Commander referred to Mr W's substance abuse, violent history and mental health concerns laid out in paragraph 36 as being another factor in their decision.

### *Lack of meaningful progress in negotiations*

68. As outlined from paragraph 30 onwards, Police negotiators tried a range of tactics in working to secure the release of the children. The PNT Coordinator Assist, an officer who estimates that he has done hundreds of negotiations in his career, tells us that Mr W showed very few signs of being "*future focused*", that is, thinking about what his life would look like after the situation was resolved. This indicated to the negotiators that they would be unlikely to talk him around to coming out.
69. The PNT Coordinator Assist tells us that at the 2.40pm meeting of the commanders, in answer to a question as to whether it could be resolved within the next three hours, he expressed the view that he did not think it could.

### *Police fatigue*

70. We are satisfied that Police had put in place sufficient contingency planning to ensure that staff were relieved before fatigue impaired their performance. This was not a factor in the commanders' decision to execute the rescue operation.

### **Was the decision justified?**

71. We acknowledge that the various factors leading to the decision to enter the house were thoroughly discussed by the leadership team. The tactical appreciation was fully documented, and consensus was reached, before the Incident Controller endorsed the plan.
72. We are conscious that if more focus had been placed on passing food and water to the children by any means possible earlier on, as raised in Issue 1, then concern for the health of the children may not have reached this critical point. This would have allowed more time for negotiations to continue. We are also of the view that, given the experience of the officers themselves who were suffering from the heat and dehydration, the Incident Controller should have sought medical advice from St Johns Ambulance earlier than 1.30pm.
73. However, given that Police did not take earlier action to pass food and water to the children in a way that Mr W was open to, we accept that the medical evidence regarding the health of the children justified Police's decision enter the bedroom.

### **FINDING ON ISSUE 3**

The decision to enter the bedroom to rescue the hostages was justified.

### **ISSUE 4: WAS THE USE OF FORCE WHEN SECURING THE RELEASE OF THE HOSTAGES JUSTIFIED?**

74. The plan to rescue the children was executed at 2.55pm. There were different teams of AOS and STG personnel, including one located outside on a ladder, one inside on the stairway and one in the bedroom opposite where Mr W and the children were barricaded. Each team had a different, pre-determined role to play.
75. At 2.55pm Officer Q, on the ladder outside the bedroom window, removed the glass from the windows and pulled the curtains back. The plan was that another STG member, carrying a Taser, could then come up behind him and engage Mr W with the Taser if appropriate, giving Police coming through the bedroom door the opportunity to rescue the two children.
76. At the same time that Officer Q was breaking through the outside window, other officers on the landing outside the bedroom door were breaching the door, which had been barricaded shut.
77. The STG and AOS officers and commanders we spoke to explained that not every member had every tactical option available to them. Instead, in the STG and AOS there is a concept of 'collective tactical options', where each team has available to it a range of weapons and equipment, and within the team each member has one job; for example, one member may have a Taser, one a shield and one a firearm.<sup>9</sup> In this case, the number of tactical options was limited by consideration of the children's safety. For example, 40mm sponge rounds were not carried by the teams. Officer Q (an AOS team leader) explained to us that the target area for sponge rounds is the lower abdomen or upper legs, and that they are designed to knock someone off balance when fired from a distance. They lack accuracy and can be lethal when fired at close range, which made them inappropriate for this operation.

### Firing of Taser

78. Officer P was an STG member and part of the team tasked with breaking through the bedroom door when the plan was executed. He told Police in his interview (monitored by the Authority) that he used his shoulder to break through the door, landing on a mattress that had been used to barricade it.
79. Officer P told Police that when he had broken through the door into the bedroom he saw:

*"[Mr W's] head in that low corner of the room and [he] had... his arms wrapped around [the girls] tightly... he was using them as [a] human shield, there's no other word for it, and... a massive ... kitchen knife right against the chest of that girl."*
80. He states that he had "not a doubt" that "if we gave him a half sniff he was gonna, he was gonna drive that knife in to that girl." He thought Mr W was about to kill the child. We have viewed the Taser footage and accept that Mr W was holding a knife to one of the children.
81. He then fired two cartridges from his Taser at Mr W.

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<sup>9</sup> This is different from a regular frontline Police officer who may be required to respond alone, and therefore needs to carry several tactical options.

82. Officer P states that he had done his Taser refresher training the previous week, at which the instructor explained that in order for a Taser to be effective, there needs to be sufficient spread between where the probes land. If the subject is too close to achieve that spread, you need to fire both cartridges at two different parts of the body. Officer P was too close to Mr W to achieve a sufficient spread, so fired the first cartridge at his upper arm and the second at his leg.
83. Section 48 of the Crimes Act 1961 allows a person to use reasonable force in defence of another person.<sup>10</sup> We are satisfied that, in the circumstances that existed, Officer P was at all times acting in defence of the children and his use of the Taser was justified.

### Discharge of firearm

84. Officer Q describes how, once he removed the glass and curtains from the window, he could see that the door opposite the window was barricaded by a bed. Mr W was sitting on the bed with his back to the wall, facing where Officer Q was. He had a child pulled tightly to his chest and was holding a machete with the point against the lower part of the child's throat.
85. Officer Q says that at that point he drew his pistol. He saw one of the team members who had smashed a hole through the bedroom door deploy his Taser against Mr W. However, he was unsure whether it had any effect because Mr W continued to hold the machete in the same position. He wondered whether it had been deployed too close to be effective.
86. He says that he was aware that the team member next to him on the ladder had his Taser drawn, but did not think he would be able to use it because of the child being held in front of Mr W.<sup>11</sup> Officer Q says that he did not feel it was practical to verbally challenge Mr W, or use pepper spray, because of the immediacy of the threat he posed to his daughter. He says he was no more than three metres from Mr W when he fired a single shot into the centre of Mr W's face. Mr W was immediately incapacitated, and Officer Q entered the room to make sure the child was not hurt.
87. Officer Q relies on section 48 of the Crimes Act to justify his shooting of Mr W.<sup>12</sup> For Officer Q to rely on this, his actions must be assessed against the following three questions:

#### (1) *What did Officer Q believe the circumstances were at the time he fired his pistol at Mr W?*

88. Paragraphs 84 to 86 lay out what Officer Q believed the circumstances to be when he fired his pistol. Officer Q described the scene in his interview to Police:

*"I do not recall [Mr W] saying anything, but his eyes locked with mine, his facial expression was wild and aggressive. I believed in that moment that he was about to kill the child. This was self-evident in the manner in which he was holding the child and the knife and his actions the previous evening and throughout the day.*

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<sup>10</sup> The law is set out in full at paragraph 101.

<sup>11</sup> That officer confirmed in his Police interview that he could not fire the Taser because the children were covering Mr W's torso so he could not target the required two main body parts or muscle groups. He too drew his pistol and was in the process of taking aim when Officer Q shot Mr W.

<sup>12</sup> The law is set out in full at paragraph 101.

*It would... have only taken the slightest movement by [Mr w] to plunge the knife in to the exposed neck or chest of the child."*

89. We accept that after Officer Q saw that Officer P's discharge of a Taser appeared to have no effect on Mr W, he thought that the child was at imminent risk of being grievously harmed or killed by Mr W.

*(2) Was Officer Q acting in defence of himself or others?*

90. Officer Q fired the shot in defence of the child.

*(3) Was Officer Q's use of force reasonable in the circumstances as he believed them to be?*

91. In light of the lethal and imminent threat that Officer Q thought Mr W posed to his daughter, we are satisfied that his use of the firearm was reasonable and proportionate.

#### FINDING ON ISSUE 4

The use of force when securing the release of the hostages was justified.

#### ISSUE 5: WAS THE FAMILY LIAISON APPROPRIATE DURING THE CRISIS?

92. The family of Mr W have complained to us that they did not feel that Police kept them adequately informed during the incident. They state that they regularly asked officers at the scene for updates, but little information was forthcoming.
93. We spoke with the Incident Controller about this. His view was that the safety of the children was the priority throughout the incident. He was aware that the children's father was the offender and their mother was in prison. He did not prioritise providing regular information to the other family members.
94. The Incident Controller told us that in his mind, the PNT were filling the family liaison role, so no specific person needed to be appointed. However, we do not think that that role does sit with the PNT. We think that having a designated family liaison officer at the scene would have benefited both the children's family and Police. It would have provided a single, central point of contact to keep the family informed, explain decisions about third party intermediaries and also methodically gather relevant information about Mr W to assist the Police operation.

#### FINDING ON ISSUE 5

The appointment of a designated family liaison officer at the scene would have benefited both the children's family and the Police operation.

## Subsequent Police Action

95. After Mr W was shot, numerous AOS and STG members entered the bedroom. On the Taser footage, an STG member can be heard making an unprofessional comment. Police have spoken to the officer, who concedes that the language was unprofessional and regrets making the

comment. We are satisfied that Police have appropriately dealt with this conduct and we have found that no further action is required.

96. Police also conducted a criminal investigation into the shooting which concluded that Police actions were justified. The findings will be reported to the Coroner.

A handwritten signature in black ink, appearing to read "Colin Doherty". The signature is written in a cursive style with a horizontal line underneath the name.

**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

17 December 2020

**IPCA: 19-1460**



## Appendix – Laws and Policies

### LAW

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#### Search and surveillance

97. Section 8 of the Search and Surveillance Act 2012 provides:

*“Entry without warrant to avoid loss of offender or evidential material*

*(1) In the circumstances set out in subsection (2), a constable may—*

- a) enter a place or vehicle without a warrant; and*
- b) search for and arrest a person that the constable suspects has committed the offence.*

*(2) The circumstances are that the constable has reasonable grounds—*

- a) to suspect that the person has committed an offence that is punishable by imprisonment and for which he or she may be arrested without warrant; and*
- b) to believe that the person is there; and*
- c) to believe that, if entry is not effected immediately, either or both of the following may occur:*
  - (i) the person will leave there to avoid arrest:*
  - (ii) evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered, or damaged.”*

98. Section 14 of the Search and Surveillance Act 2012 provides:

*“Warrantless entry to prevent offence or respond to risk to life or safety*

*(1) A constable who has reasonable grounds to suspect that any 1 or more of the circumstances in subsection (2) exist in relation to a place or vehicle may—*

- a) enter the place or vehicle without a warrant; and*
- b) take any action that he or she has reasonable grounds to believe is necessary to prevent the offending from being committed or continuing, or to avert the emergency.*

*(2) The circumstances are as follows:*

- a) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property:*

- b) *there is risk to the life or safety of any person that requires an emergency response.*

## Use of force

99. 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”*.
100. 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”*.
101. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use”*.

## POLICY

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### Control and command

102. Police policy provides:

*“For a Police led operation a Police Incident Controller will have responsibility for an Incident Site. They will have overview of all the components of the incident site, controlling other agencies, and commanding Police elements.*

*When first responding to an incident, the initial Incident Controller (if not in the Communications Centre) must continue to update Communications Centre as to progress and support and the Communications Centre must continue to provide advice and support as required.*

*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.”*

103. The key elements of command are:

- Leading
- Planning
- Organising
- Coordinating
- Controlling.

## Appreciation process

104. Police policy provides that:

*“an ‘appreciation’ is a process for problem solving and decision-making. It uses a set pattern so that all factors and alternatives are considered. The appreciation breaks a situation into its smaller component parts examining each part in detail. It is the act of understanding the nature, magnitude or meaning of the situation which you face.*

*An appreciation process involves estimating the quality of things and giving them their proper value; understanding the nature, meaning and quality or magnitude of a situation.*

*An appreciation:*

- allows the design, planning, execution and adaption of actions within the operational environment
- can be completed by an individual or a planning team
- should be written - particularly for larger incidents or operations
- allows for clear thought and logical reasoning by examining the whole situation.

*The output from an appreciation is options which can be back briefed to the Controller or Commander for guidance and approval on one course of action. The approved course of action is developed in a plan. The plan generally is developed into the operations orders outlining how the operation will proceed in more detail.*

## TENR process

105. Police policy provides:

*“TENR is to be at the core of determining how Police intervene or deploy. It is a decision-making process that 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.*

*This threat assessment methodology will help staff to balance the maintenance of safety with effective execution of their duties. The process is referred to by the mnemonic TENR, where:*

**T - Threat** is assessed. This means any individual, and act, or anything that is likely to cause harm or have the potential to hinder Police in the performance of their duties.

**E - Exposure** is managed, including the potential for harm (physical or otherwise) to people, or the security of places or things.

**N - Necessity** to intervene immediately is considered. Is there a need to intervene now, later, or not at all?

**R - Any Response** is proportionate, and based on a considered assessment of Threat, Exposure and Necessity

*The response to any given situation must be considered, timely and proportionate. It must consider the impact on Police, our partners, the focus<sup>13</sup> of our attention and any third parties that are impacted.”*

## Police negotiators

### *Police Negotiation Teams*

106. A Police Negotiation Team (PNT) uses negotiating tactics and techniques to assist in resolving high-risk incidents. There are 17 PNTs in New Zealand, each capable of deploying to incidents alone. The PNT provides a further tactical option to the Incident Controller and is often used in conjunction with other specialists, primarily the AOS.

### *Advanced Police Negotiation Team (APNT)*

107. Police policy provides that the role of APNT is to:

*Enhance the capability of the district PNT and to offer expertise, advice and guidance, in combination with the PNT National Capability Advisor, in major, high risk, protracted, multi-district or complex incidents, including hostage, siege, terrorist and kidnapping incidents.*

### *Third party intervention*

108. Police policy states:

*People who know a subject may believe they are the best people to do the negotiation. This is usually not the case.*

*These people are not trained negotiators and generally should not be used as such. The relationship between these people and the subject may not be as it has been described to Police and how they will react to each other is not known. The third party may provide an audience for the subject doing what they have been threatening, or become a hostage.*

*Gather the knowledge that third parties have of a subject as part of operational intelligence.*

*If a third party is being considered in a negotiation, the third party risk assessment process must be undertaken.*

## Firearms

109. Police policy states that an operator may use the firearm when their perceived cumulative assessment gives rise to an honest belief that the subject, by age, behaviour exhibited (death or grievous bodily harm), apparent physical ability, threats made and opportunity or a combination of these is capable of carrying out the threat of death or grievous bodily harm to any person.

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<sup>13</sup> The focus of attention is usually victims, offenders, communities or any and all of these.





# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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?

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Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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

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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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