

# Fatal shooting of Astin Hooper near Kawerau

## Summary of the Incident

1. On the morning of Thursday 21 February 2019, two Armed Offenders Squad (AOS) officers shot Astin Hooper after he had fired a shot at them following a Police pursuit.
2. Mr Hooper had earlier taken a shotgun and a ute from his father's home and robbed the Kawerau Credit Union. In response, Police called out the AOS and local officers searched for Mr Hooper. An officer found him stopped in a truck turning bay at about 9.40am and began pursuing him shortly afterwards. Four AOS officers drove towards the incident from Rotorua.
3. At about 10.21am, Mr Hooper pulled over to the side of the road. Two patrol cars stopped behind him, keeping a distance of about 100 metres. A third patrol car also stopped about 80 metres away on the other side.
4. The first AOS car arrived at 10.23am, drove past the third patrol car and stopped about 30 metres in front of the ute. AOS Officers A and B immediately got out and presented their rifles at the ute, using their car as a shield.
5. Mr Hooper fired once at the AOS officers, who fired nine shots back at him. Mr Hooper suffered five gunshot wounds to his head, neck, chest and shoulder. Despite receiving first aid within a minute of being shot, he died at the scene.
6. Police notified the Authority of the shooting, which we independently investigated. The Authority's investigation included:
  - liaising with Police as they conducted their own investigation, and reviewing investigation documents;
  - attending a scene reconstruction conducted by Police and ESR;
  - interviewing 10 officers involved in the incident;

- reviewing medical evidence as to Mr Hooper’s cause of death; and
- interviewing Mr Hooper’s whānau.

## Issues examined by the Authority

**Issue 1:** Did Police manage their response to Mr Hooper’s offending effectively?

**Issue 2:** Were AOS Officers A and B justified in driving past the cordon?

**Issue 3:** Were AOS Officers A and B legally justified in firing at Mr Hooper?

**Issue 4:** Did Police provide medical assistance to Mr Hooper in a timely and appropriate manner?

## The Authority’s Findings

7. AOS Officers A and B escalated the situation by driving past the existing cordon, resulting in Mr Hooper firing at them. Therefore, although the AOS officers were legally justified in firing at Mr Hooper in self-defence immediately after he shot at them, we find their actions were not justified in the circumstances overall.
8. AOS Officers A and B should have stopped at the cordon and sought to de-escalate the situation by communicating with Mr Hooper. They also should have consulted the Incident Controller and obtained his approval for their arrest plan.
9. Additionally, we found that Police:
  - 1) responded to the two initial incidents involving Mr Hooper in a timely and effective manner;
  - 2) managed the search for Mr Hooper, and the subsequent pursuit, appropriately and in line with Police policy; and
  - 3) provided timely and appropriate medical assistance to Mr Hooper.

## Analysis of the Issues

### ISSUE 1: DID POLICE MANAGE THEIR RESPONSE TO MR HOOPER’S OFFENDING EFFECTIVELY?

#### Mr Hooper’s actions leading up to the pursuit

10. In the early hours of 21 February 2019, Mr Hooper, aged 29, was at his father’s home in Kawerau. He asked if he could use his father’s Hilux ute, but his father refused as he had no driver’s licence.
11. At about 8.55am, Mr Hooper’s father and stepmother heard a shotgun blast outside. Both feared that Mr Hooper had shot himself. They went to investigate, and saw Mr Hooper standing

by the ute with his father's shotgun and an ammunition belt containing about 10 rounds of ammunition. Mr Hooper waved the shotgun and swore at them, telling them to get back inside and to "piss off".

12. Mr Hooper's father went behind the house, and then saw Mr Hooper driving the ute away at speed. Meanwhile, Mr Hooper's stepmother went to a neighbour's house and called 111. Mr Hooper was known to Police. A local officer, Officer E, sent two officers to the address.
13. Shortly after 9am Mr Hooper entered the Kawerau Credit Union building carrying the shotgun. He approached a worker at a desk and asked for money. She put cash on her desk. Mr Hooper picked up the money, left the building and drove off. The worker activated a silent alarm, notifying an alarm monitoring company who called Police at about 9.07am.
14. Officers arrived at Mr Hooper's father's house and at the Credit Union at about 9.11am. As Mr Hooper had a shotgun, the officers carried firearms and wore ballistic body armour.<sup>1</sup> Bank staff at the Credit Union confirmed the robber was Mr Hooper, who was known to some of them.
15. Frontline Police responded to both incidents in a timely manner. It was appropriate for the officers attending to arm themselves, and they did so in accordance with policy. They maintained good communications with each other and the Police Communications Centres, which allowed the two incidents to be managed efficiently.

### Police search for Mr Hooper

16. Police manage incidents using the framework set out in the Police 'Control and Command' policy.<sup>2</sup> As most incidents are reported to the Police Communications Centres, the shift commander of the relevant Communications Centre takes initial control until an operation or tactical commander in the field can safely be handed incident control at the appropriate time.
17. In this case, at about 9.14am the Northern Communications Centre (NorthComms) shift commander told Officer E he was the "incident controller designate", meaning he would take over operational control of the search for Mr Hooper when he was in a position to do so. He acknowledged this message. Officer E recalled:

*"Comms told me that I was Incident Controller designate at that stage... which I was doing, I guess, by default anyway... the thing that needed addressing was finding the offender or the vehicle..."*

18. Officer E said Mr Hooper was a "high risk target" due to his history and his behaviour that day. He noted that Mr Hooper had made no attempt to disguise himself as he robbed the Credit Union, and believed this suggested a "fatalistic approach to his offending that day". He requested AOS support due to the risk Mr Hooper posed to the public, Police and himself.

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<sup>1</sup> Police policy requires officers to wear ballistic body armour – in this case, hard armour plating (HAP) over their standard issue Stab Resistant Body Armour (SRBA) – which provides additional protection of vital organs during incidents involving firearms.

<sup>2</sup> See paragraphs 112 to 120 for more detail on the policy.

19. At about 9.20am, Police received information that Mr Hooper was on McKee Road. Officers E and F were in a patrol car nearby, so went to see if Mr Hooper was still there. Another Police car went to the opposite end of McKee Road to prepare a cordon if Mr Hooper left.
20. At 9.36am, the NorthComms dispatcher asked Officer E to confirm when he was ready to take over as Incident Controller. Officer E replied *"oh... I'm Incident Controller now."* NorthComms formally appointed him Incident Controller from this time.
21. The recording of the Police's radio communications during the search for Mr Hooper shows that the officers had considerable local knowledge of the area, the road network, and the people involved. This was invaluable and enabled a fast, well-coordinated response, including:
  - a) prompt and coordinated placement of patrols and cordons;
  - b) pre-emptive visits to associates who might be at risk or have useful information;
  - c) engaging the local forestry and transport communities to keep a look out; and
  - d) supporting each other once Mr Hooper was located.
22. This was all done in a very calm and organised way. Officers updated NorthComms and each other regularly. Police also attempted to call Mr Hooper's cellphone, but he did not answer.
23. At about 9.42am, Officer E radioed to say he could see the ute in a truck turning bay on McKee Road. A person was inside, presumed to be Mr Hooper. Officer E said he was not going to approach until other Police were with him, preferably AOS officers.
24. Mr Hooper saw Officer E's Police car and drove around the turning bay, so the vehicles were facing each other. Officer E drove into the turning bay, where a central mound of grass provided some cover if Mr Hooper presented his firearm. A brief encounter followed which involved Mr Hooper chasing the Police car around the turning bay twice, before heading back out onto McKee Road and driving away. Neither Mr Hooper nor Police presented their firearms.
25. Officer E drove onto McKee Road, following Mr Hooper's direction of travel. Mr Hooper had driven some distance and overtaken a truck, so it took a few minutes before Officer E caught up with Mr Hooper's ute.
26. As Officer E was actively involved in searching for and now attempting to stop Mr Hooper, his ability to manage the overall incident response was somewhat compromised. An Incident Controller needs to have oversight of the total Police response, which in this case included managing cordons, following up with Mr Hooper's contacts to assess his possible intentions, considering tactical options (including AOS deployment), and using general duties officers to stop Mr Hooper.
27. We accept it was appropriate for Officer E to be the Incident Controller, as he had valuable local knowledge which helped Police to effectively manage the search for Mr Hooper. It was also a rural area with a limited number of officers available. However, we consider that when Officer E was told he would become the Incident Controller, he should have handed over the driving

duties to the other officer in his patrol car before accepting incident control. In this incident, fortunately, the search was easily managed and the pursuit a relatively safe one. But if anything had changed, such as the speed of the pursuit or an earlier presentation of firearms by Mr Hooper, Officer E would have had to attempt to effectively manage all Police involvement while himself being embedded in a dangerous frontline situation.

28. Officer E acknowledged:

*“...I was sort of driving as a lead vehicle and so I don't know whether that's the best place for the Incident Controller and that, we sort of discussed that in hindsight too, that it probably would've been better with someone else who wasn't so directly involved with the pursuit to be the Incident Controller, I guess, just because you, it's one less thing you need to be worried about, I guess.”*

29. Officer E did not initially activate his lights and sirens, or signal Mr Hooper to stop. Therefore, although Police were following Mr Hooper, they were not technically 'pursuing' him at this stage according to Police policy.<sup>3</sup> Officer E told NorthComms his plan had not changed; he would not stop Mr Hooper or approach the ute without appropriate support.

30. In the meantime, AOS were coming from Rotorua to assist. Being made aware of this, officers already on the road around Kawerau were instructed to maintain their distance, and not to stop Mr Hooper unless they had adequate support. We believe this was a sensible approach in the circumstances.

### Police signal Mr Hooper to stop and start a pursuit

31. By about 9.47am two additional patrol cars, with two officers in each, were behind Officer E. Officer E believed he now had adequate support to stop Mr Hooper, so signalled him to stop using his lights and sirens. Mr Hooper failed to stop, and Police formally began a pursuit.

32. It appears that, during the pursuit, the shift commander at NorthComms assumed the role of 'pursuit controller' in line with the Police 'Fleeing driver' policy. Officer E believed the shift commander was running the pursuit rather than him, noting: *“...it's a pretty big call on a sergeant to tell an inspector at Comms what he should do”*. Officer E was also busy providing a commentary of the pursuit as the lead vehicle, so having the shift commander take control was sensible.

33. Ideally, the officers would have clearly stated over the radio who was in command at this point. However, the lack of clarity did not create a problem in this case as most officers understood that Officer E remained the Incident Controller even if the shift commander was running the pursuit.

34. The pursuit lasted for over 30 minutes. Mr Hooper's manner of driving was safe, and his speed varied from 60 to 80 kph on open roads with 100 kph speed limits. The NorthComms shift

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<sup>3</sup> Police 'Fleeing driver' policy defines a fleeing driver as *“A driver who has been signalled to stop by a constable but fails to do so.”*

commander initially denied officers permission to use road spikes to stop Mr Hooper. Officer E told us:

*“... obviously there’s rank, structure in the police for a reason but I think more that decision is based around local knowledge more than rank. Just that we understood the area I think a lot better than the inspector at Comms did. I spoke to him after the event and he said he just didn’t want him stopping in a populated area but if he’d known Te Teko, we’d spike him there and by the time air is out of the tyres he would have been – didn’t matter which way he went he would have been in a non-populated area in the middle of yeah in a paddock somewhere outside town.”*

35. At about 9.54am, Mr Hooper quickly stopped outside his cousin’s address and threw something (later confirmed to be cash from the Credit Union) onto the driveway. He made a U-turn and the Police cars following him pulled to the left side of the road, preparing to take evasive action in case he decided to ram them. Mr Hooper drove past these cars and sped up to about 80 kph, still in a 100 kph zone. Shortly afterwards the NorthComms shift commander authorised the use of road spikes in rural areas as the pursuit continued.
36. At about 10.12am, an officer laid road spikes in a rural area as Mr Hooper approached. This officer presented his pistol towards the ute and challenged Mr Hooper to stop. Mr Hooper drove off the side of the road, around the road spikes, and carried on in the direction he had been heading. He did not respond to the armed challenge with his own firearm and the officer did not fire his pistol.
37. At about 10.21am, Mr Hooper brought the ute to a stop on the side of Onepu Springs Road. Officer E stopped about 100 metres behind the ute, and another patrol car stopped behind him. A third patrol car drove past the ute and stopped about 80 metres ahead of it, effectively closing the road. Other mobile Police officers coordinated with each other to ensure roads feeding into the area were cordoned off.

## FINDINGS ON ISSUE 1

Police responded to the two initial incidents involving Mr Hooper in a timely and effective manner.

Police managed the search for Mr Hooper, and the subsequent pursuit, appropriately and in line with Police policy.

## ISSUE 2: WERE AOS OFFICERS A AND B JUSTIFIED IN DRIVING PAST THE CORDON?

### Was it appropriate for AOS Officer A to take ‘incident control’?

38. The AOS Commander had called AOS Officers A, B, C and D at about 9.25am to advise them of the incidents involving Mr Hooper. They subsequently travelled from Rotorua to Kawerau to assist general duties officers in arresting Mr Hooper. AOS Officers A and B were in one car, with AOS Officers C and D in another.
39. Because Mr Hooper was not stopping for Police, the AOS plan was to catch up with Mr Hooper and use their vehicles to force him off the road before confronting and arresting him. This is

called a non-compliant vehicle stop.<sup>4</sup> Officer E said he discussed this with the AOS officers and agreed this was the preferred option for the arrest.

40. At about 10.19am, AOS Officers A and B had almost caught up with the pursuit. They did a U-turn and stopped. AOS Officer A said in his Police statement that it was too risky to carry out the non-compliant vehicle stop with only one vehicle, so he and AOS Officer B needed to wait for the second AOS vehicle to arrive. AOS Officers C and D were several minutes behind them. The AOS officers planned to get in behind the ute when Mr Hooper drove past. However, at 10.21am, they heard over the radio that Mr Hooper had stopped on his own, further down the road behind them.
41. AOS Officer A decided he and AOS Officer B would move forward to provide immediate support to the general duties officers. He did this because he *“didn't know whether the general duties staff had made contact with the offender, or what the circumstances were that were happening there.”* AOS Officer B said: *“I remember thinking that this offender could easily get out of his vehicle and walk towards the pursuing staff or run off on foot with the firearm.”*
42. AOS Officer A said he was the ‘Forward Commander’ for the AOS during this incident. Police policy defines this role as:

*“a person in charge of a specific task group and includes: ... An officer in charge of an element, such as AOS, cordons, arrest team, etc.*

*A Forward Commander differs from an Incident Controller in that they are task specific and may not necessarily have an overall incident awareness, nor control any other elements deployed.”*
43. AOS Officer A knew Officer E was the Incident Controller. As noted above, that role has responsibility for commanding the incident as a whole. He said he did not know the NorthComms shift commander had passed incident control to Officer E, but he thought *“[Officer E] was the senior member present so he would by default be the Incident Controller.”*
44. At about 10.21am AOS Officer A radioed: *“we're getting behind this I'm gonna take incident control.”* However, Police policy states: *“Control or command must not be seized or taken, it should be formally handed over.”* AOS Officer A may have meant that he was taking forward command of the AOS operation to arrest Mr Hooper, rather than *“incident control”*. If that was the case, he should have made this clear.
45. In his role as the Forward Commander, AOS Officer A also should have consulted the Incident Controller and obtained his approval for the AOS's plan to move forward towards Mr Hooper, rather than just telling him that it was going to happen. When we asked him if he was operationally responsible to the Incident Controller, he initially said: *“No I was coming under*

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<sup>4</sup> An AOS or Special Tactics Group (STG) Commander may authorise a non-compliant vehicle stop during an AOS or STG operation, in situations involving a mobile armed fleeing driver *“where there is no other timely practical method of containing the fleeing driver or neutralising the threat they present”*. Only AOS or STG officers trained in its use may perform such a vehicle stop.

[the AOS Commander]", but later acknowledged that the Incident Controller is supposed to sign off tactical options as well.

46. Officer E did not challenge the AOS seizing control of the incident. He said:

*"I had no discussions about what their new plan was going to be. Whether it was challenge or whatever else was in their thing, I was happy to leave the tactical options over to them just because they've got the skills. They are trained for that situation more than we do. From my point of view we'd made the scene as safe as we could for them."*

47. We believe there should have been a discussion between the AOS and the Incident Controller (Officer E) when Mr Hooper stopped and the non-compliant vehicle stop was no longer necessary. AOS Officers A and B had time to consider alternative tactical options and to ensure frontline officers knew the new plan, via the Incident Controller.

### Were AOS Officers A and B justified in driving up to Mr Hooper?

48. One of the Police 'Firearms' policy's key guiding principles is:

*"When the offender's actions permit, police focus on de-escalation, communication, and prevention, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender."*

49. This tactic is referred to as 'cordon, contain and appeal'.

50. In this case, two general duties patrol cars had stopped about 100 metres behind Mr Hooper, with another stopped about 80 metres in front of the ute, cordoning Mr Hooper from the public. Officer E noted:

*"We had [Mr Hooper] contained. But in saying that he wasn't immobile.... Basically we were just trying to keep the members of the public away from where he was so I was happy to leave it up to the expertise of [the AOS] to decide what was the most appropriate way to deal with that."*

51. Officer E tells us he expected that the AOS officers would conduct a high risk vehicle stop, rather than 'cordon, contain and appeal'. A high risk vehicle stop (sometimes called an 'armed 3T') involves armed officers, ideally AOS, approaching a vehicle to "challenge" and arrest a dangerous offender. Officer E says he would have used the tactic himself if the AOS had not been there, because:

- Mr Hooper could still drive away in the ute, and possibly go "off road" to avoid the cordons;
- Police would be criticised if Mr Hooper managed to escape the cordons and commit further offences or harm people;
- they did not know what Mr Hooper was thinking because he refused to speak with them by phone;

- Mr Hooper had already avoided road spikes;
  - Mr Hooper could use the ute to ram Police cars at the cordon and put officers at risk;
  - if Mr Hooper managed to escape, the AOS would have to attempt a non-compliant vehicle stop, which he considers more dangerous than a high risk vehicle stop;
  - they were in a rural area *“with only limited potential for any collateral damage to either property or the people”*, so the location *“was as good as we were able to expect if it were to escalate into hostilities involving firearms”*;
  - Police had the opportunity to take *“affirmative tactical action to resolve the situation in a controlled (and safer) manner rather than reacting to the irrational decision making of [Mr] Hooper”*; and
  - he did not want to give Mr Hooper time to come up with a plan *“if his intentions were [to] take hostile action against Police staff”*.
52. AOS Officers A and B also did not believe Mr Hooper was contained. AOS Officer B said they wanted to ensure he could not drive away, as they were concerned Mr Hooper would *“use the vehicle to assault someone or use the firearm he was in possession of against some other person.”*
53. However, the AOS officers tell us that rather than conducting a high risk vehicle stop, they were in fact trying to more effectively ‘cordon, contain and appeal’ by getting closer to Mr Hooper. The closest Police vehicle was 80 metres from the ute. AOS Officers A and B say they needed to reduce that distance to voice appeal to Mr Hooper, and to react quickly if he tried to leave the scene.
54. We believe the AOS officers’ actions on the day contradict their contention that they were trying to ‘cordon, contain and appeal’. The radio transmissions and the AOS officers’ Police statements clearly show their plan was to:
- try to box in the ute with two Police vehicles so it could not drive away;
  - get out of their car and use it as cover; and
  - challenge Mr Hooper with their firearms, instructing him to get out of the ute with his hands up.
55. This plan is consistent with conducting a high risk vehicle stop, not with cordoning and containing an offender. The purpose of cordoning and containing is to de-escalate the situation and attempt negotiation, not to escalate the risk of an armed confrontation. Therefore, we do not agree with the AOS officers that they were using the ‘cordon, contain and appeal’ tactic.
56. AOS Officer B radioed the *“Kawerau car”* (Officer E) to move up behind the ute to box the vehicle in, and said he would do the same from the front. However, Officer E did not hear the instruction. He told us that, even if he had heard it:

*"It's not something we're trained to do, to get that close to a vehicle with an armed offender in, to be honest.... If we'd been asked to do it, I would have considered it I guess, but it's not something we're trained in."*

57. In addition, such a tactic would create a risk of crossfire between AOS officers in front of the ute and Kawerau officers from the rear.

58. At about 10.22am, AOS Officer B drove around a bend in the road and realised Officer E had not moved forward. However, he continued driving towards the ute and saw there was one person inside. AOS Officer B said in his Police statement:

*"I remember calling to [AOS Officer A] to 'get guns up' in our vehicle to mitigate any threat that the offender may choose to do at that point as we approached. That means that I wanted cover from [AOS Officer A] up and towards the offending vehicle in case he began firing at us or presented a firearm."*

59. AOS Officer A said:

*"My intention was to get out of the Police vehicle and while using the cover of the Police vehicle challenge or instruct the occupant of the Hilux to get out of the vehicle with his hands raised."*

60. As AOS Officers A and B moved forward and began slowing to a stop, they saw movement within the ute. They then saw that the person inside (Mr Hooper) was holding a firearm and pointing it towards them through the driver's window. AOS Officer B stopped about 30 metres in front of the ute.

61. AOS Officer B got out of the AOS vehicle first and took shelter behind the open driver's door. He pointed his Bushmaster rifle at Mr Hooper and began calling to him to come out of the ute with his hands up. AOS Officer A took a moment longer to get out because his helmet's radio cord became tangled in his seatbelt. He took off his helmet and took cover behind the boot of the Police car. He also pointed his rifle at the ute and began calling to Mr Hooper. A video recording made on one of the general duties officers' phones shows both AOS officers were out of their vehicle and had rifles pointed at the ute within nine seconds of stopping their car.

62. AOS Officer A argued it was necessary for them to drive up to Mr Hooper's vehicle, rather than stay back with the other Police vehicles in the cordon. He said staying back was not a realistic option because:

*"upon pulling up the offender was already levelling a firearm at Police. He'd already discharged a shot in the initial incident. He'd already used the firearm in the commission of an aggravated robbery at a bank. I believe that our own staff were, were at risk from an armed offender and I believe that we had the, the training and the equipment to, to deal with the situation."*

63. AOS Officer B said staying back was not an option for them because their mission was to arrest Mr Hooper and *"we'd made a plan. We'd stuck to the plan. We executed. Well, we went to execute that plan."*

64. The AOS officers appear to have had a mindset that Mr Hooper posed a deadly threat and they needed to seize control of the situation to bring the incident to a swift end. Their reasons for acting as they did were much the same as Officer E's reasons for supporting a high risk vehicle stop, which are set out above in paragraph 51.
65. We acknowledge the officers were concerned about what Mr Hooper might do. It was appropriate for the AOS officers to take over the frontline position from the general duties officers, as they are much more prepared and equipped to deal with armed offenders. However, we disagree that AOS Officers A and B needed to drive forward and act immediately to arrest Mr Hooper, for the following reasons:
- While he was stopped, and until AOS Officers A and B drove up towards him, Mr Hooper had not presented the shotgun at anyone.
  - During the pursuit, Mr Hooper had several opportunities to present his shotgun at Police but had not done so.
  - Radio transmissions confirmed all nearby roads were cordoned off. While the Police cordon may not have been sufficient to prevent Mr Hooper from leaving the scene, the AOS officers could have strengthened it and prepared to take action if Mr Hooper attempted to drive off again. AOS Officers C and D were only minutes away and would have reinforced AOS Officers A and B's ability to respond effectively.
  - Mr Hooper had stopped in a rural area and posed no immediate risk to members of the public, as there was a cordon.
  - They could have issued instructions using a speaker while staying a safe distance away.
66. AOS Officers A and B were committed to their initial plan of a non-compliant vehicle stop, and failed to adequately reassess the situation when they heard Mr Hooper had already stopped. When they saw the Kawerau officers had not moved their car up to the immediate rear of the ute to box it in, AOS Officer B drove forward nonetheless, breaking the cordon. Neither AOS Officers A nor B considered other options, one of which was to remain at the cordon and commence voice communications. While this would have likely meant a prolonged standoff, it may have prevented a fatal shooting.
67. By immediately driving closer to Mr Hooper, the AOS officers unnecessarily escalated the situation, put themselves within range of his shotgun and prompted his reaction. Mr Hooper's decision to aim and fire his shotgun at the AOS officers was entirely his own responsibility, but the Police response should have afforded him a greater opportunity to reconsider his actions and surrender. While Mr Hooper was stopped in a remote area, Police should have used the time to strengthen their cordons, get the Police Negotiation Team in place, and prepare to take action if Mr Hooper moved towards Police and threatened them.
68. For these reasons, we find AOS Officers A and B's actions in driving past the cordon to get closer to Mr Hooper were not justified.

AOS Officers A and B should have stopped at the cordon and sought to de-escalate the situation by communicating with Mr Hooper.

The AOS officers also should have consulted the Incident Controller and obtained his approval for their arrest plan.

### ISSUE 3: WERE AOS OFFICERS A AND B JUSTIFIED IN FIRING AT MR HOOPER?

69. As AOS Officers A and B's vehicle approached him, Mr Hooper picked up the shotgun from his passenger's seat where it had been resting with the stock in the footwell. He manoeuvred it around and put the barrel out of the partially open driver's window.
70. As described above, the AOS officers stopped, got out of their vehicle, and called on Mr Hooper to surrender. Mr Hooper aimed the shotgun in the direction of AOS Officers A and B, and fired one shot. This went above the Police car and landed about 35 metres behind them.
71. AOS Officer A told us:

*"I immediately moved the safety selector of my weapon to fire and fired what I now know to be six times at the centre mass of the occupant's position within the vehicle.... We were appealing him... we were giving him clear instructions and if he had engaged in conversation with us it was our full intention to negotiate him out of the car, but he fired at police."*
72. After firing, AOS Officer A could see Mr Hooper slumped forward in the ute and he did not fire again.
73. AOS Officer B said: *"it probably took a second or so to register, 'I've been fired upon. I need to do something about that,' and I returned fire."* AOS Officer B fired two shots and could see Mr Hooper sitting upright in the driver's seat of the ute with his weapon still pointed towards their Police car. He fired again until he saw Mr Hooper slump over.
74. All shooting finished within 30 seconds of AOS Officer A and B stopping their car. Police later determined that AOS Officer A had fired six shots and AOS Officer B had fired three.
75. Mr Hooper suffered five gunshot wounds in total to his head, neck, chest and shoulder.

#### Assessment of the officers' legal justification for shooting

76. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another.
77. Although we have found that AOS Officers A and B were not justified in driving past the cordon and approaching Mr Hooper, section 48 may still provide them with legal justification for shooting at Mr Hooper in defence of themselves and each other.
78. In order to rely on a defence under section 48, the officers' actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:

- a) What were the circumstances as the officers believed them to be?
- b) Was the officers' use of force for the purpose of defending themselves or another?
- c) Was the force used reasonable in the circumstances as the officers believed them to be?

*What were the circumstances as AOS Officers A and B believed them to be?*

- 79. AOS Officer A told us he knew the offender (Mr Hooper) had stolen a vehicle, fired a shot and committed an armed robbery. He said he did not know and did not ask what kind of firearm Mr Hooper had.
- 80. AOS Officer B recalled NorthComms and the District Command Centre advising that Mr Hooper had fired a shot at a person (which was incorrect). He also remembered the District Command Centre advising them Mr Hooper had a shotgun, was possibly under the influence of meth and may be suicidal.
- 81. AOS Officer A said that, in the moments leading up to the shooting, he could see the barrel of Mr Hooper's firearm pointed towards his vehicle. He told Police Mr Hooper posed a threat of death or grievous bodily harm towards himself and Officer B: *"He had already signalled an intention to use [the shotgun] by picking it up and pointing it at us."*
- 82. AOS Officer A said:

*"I challenged the occupant of the vehicle saying several times, 'Armed police. Put the gun down.' At that stage I was already thinking: 'how long am I prepared to accept the threat of someone pointing a firearm at me before I'm going to have to use lethal force'."*
- 83. He then saw Mr Hooper fire a shot at him and AOS Officer B. He believed he and AOS Officer B were exposed to further shots from Mr Hooper and it was necessary to respond using lethal force.
- 84. AOS Officer B said he could see a firearm was *"facing directly towards us"*. He was calling to Mr Hooper to put the weapon down and put his hands up, and Mr Hooper was not responding. He told Police: *"I had a thought when he was pointing his gun towards me of 'how long am I prepared to sit there and let him point a potentially loaded firearm at me before I do something'."*
- 85. AOS Officer B saw the flash of the shotgun being fired and thought: *"I'm dead and... I'm never going to see my kids again."* He then saw Mr Hooper moving inside the vehicle and thought he was reloading his shotgun to shoot at them again.

*Did AOS Officers A and B use force in defence of themselves or another person?*

- 86. Based on the above accounts, we accept that AOS Officers A and B fired their rifles to protect themselves and each other from Mr Hooper.

*Was the force used reasonable in the circumstances as AOS Officers A and B believed them to be?*

87. The officers had called on Mr Hooper to surrender before he fired a shot at them. Despite that warning, he fired directly at them and appeared to be attempting to fire again. It was reasonable for the AOS officers to fire back at Mr Hooper. Mr Hooper continued to pose an immediate and potentially lethal threat to them, so the officers firing at him to protect themselves was a reasonable and proportionate response.
88. Using other options to defend themselves was not realistic in the circumstances. It was not safe for the officers to leave the cover provided by their Police vehicle to move forward to a position where less lethal options such as a Taser could have been used.
89. Police firearms training emphasises the continual assessment of risk when firing at someone. In some circumstances, this will require a reassessment after each shot, while in others, officers may be justified in firing a burst of shots before reassessment. Police are trained to shoot until *“the threat is neutralised or incapacitated”*.
90. In this case, AOS Officer A fired six shots and stopped after seeing Mr Hooper slumped over in his ute. AOS Officer B said he fired two shots, saw that Mr Hooper was still upright, and fired again until he saw Mr Hooper slumped over (AOS Officer B fired three shots in total). This was consistent with the officers being trained to continue firing until they see that the person no longer poses a lethal threat.
91. We are therefore satisfied AOS Officers A and B were legally justified in firing at Mr Hooper in defence of themselves and each other.

### FINDINGS ON ISSUE 3

Both AOS Officers A and B were legally justified in firing at Mr Hooper to defend themselves and each other in the immediate moments after he shot at them.

### ISSUE 4: DID POLICE PROVIDE MR HOOPER WITH MEDICAL ASSISTANCE IN A TIMELY AND APPROPRIATE MANNER?

92. Police records show shots were fired at 10.23am, and an ambulance was called within 40 seconds.
93. AOS Officer A saw Mr Hooper slumped forward in the driver’s seat of the ute, no longer moving. The AOS officers approached the ute and could see Mr Hooper had been seriously injured. AOS Officer A called to officers behind the ute to bring a first aid kit. AOS Officer A took the shotgun from the ute and placed it on the grass on the far side of the road.
94. AOS Officer A applied a pressure dressing to a large wound to slow blood flow. AOS Officer C arrived at the ute, with his specialist AOS first aid kit, and helped remove Mr Hooper from the vehicle so first aid could be given more effectively.<sup>5</sup> AOS Officers C and D took over first aid and instructed other officers how best to help. They made sure Mr Hooper had constant care,

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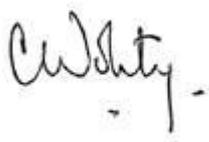
<sup>5</sup> AOS officers receive additional medical training and carry comprehensive trauma kits for first aid.

including keeping pressure on his wounds and giving him CPR. An ambulance arrived at about 10.35am and took over Mr Hooper's care.

95. The nature and extent of Mr Hooper's injuries were not survivable. His death was confirmed at 10.46am.

#### FINDING ON ISSUE 4

Police provided timely and appropriate medical assistance to Mr Hooper.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

13 May 2021

**IPCA: 18-1832**

## Appendix – Laws and Policies

### USE OF FORCE

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#### Law

96. 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.”*
97. Section 40 of the Act also states that Police may use *“... such force as may be necessary to prevent the escape of [someone who] takes to flight in order to avoid arrest”*.
98. Section 48 of the Act states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*
99. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

#### Police policy on use of force

100. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain or arrest a person, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
101. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR assessment:
  - Threat: Any individuals or any actions or anything likely to cause harm.
  - Exposure: Potential for harm to people.
  - Necessity: Whether to respond to a given situation.
  - Response: An officer must consider all the circumstances and must be timely, appropriate and proportionate.
102. 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.

103. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable use of force, given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
104. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
105. The policy states any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

## FIREARMS

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### Authorisation to carry firearms

106. Officers who hold the position of sergeant or above, and officers who are authorised by a district or communications centre supervisor, may carry firearms when there is "*clear and specific evidence*" they may encounter circumstances in which they may be required to use a firearm.

### Responsibilities when firearms are carried

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

### Use of firearms

109. The 'Police firearms' chapter of the Police Manual instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act, and sets out the circumstances in which the use of lethal force is justified.

110. The Police 'fire orders' state:

***“Responsibility for knowing when firearms may be used***

*Every Police employee issued with a firearm is personally responsible for ensuring they are thoroughly conversant with relevant law, particularly sections 39, 40, 41, 48, and 62 of the Crimes Act 1961, and all relevant instructions and guidelines contained in this chapter.*

***Conditions to be satisfied before use***

*The circumstances justifying police firing at an offender can change very rapidly. Any employee who fires a shot must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so.*

*An offender must not be shot without first considering —*

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|--|---|
| <i>Communication</i>                                   | <i>they must have first been asked to surrender (unless it is impractical or unsafe to do so), and</i>    |
| <i>Less violent alternatives<br/>(Proportionality)</i> | <i>it must be clear they cannot be disarmed or arrested without first being shot, and</i>                 |
| <i>Delay (Necessity)</i>                               | <i>it must be clear that further delay in apprehending the offender would be dangerous or impractical</i> |

***Making decisions to use***

*Police must only use a firearm for these lawful purposes:*

|   |  |
|---|--|
| <i>Lawful Purpose</i>   | <i>Police may use a firearm...</i>   |
| <i>Defending themselves or others<br/>(s48 Crimes Act 1961)</i> | <i>to defend themselves or others if:<br/>they fear death or grievous bodily harm to themselves or others, and<br/>cannot reasonably protect themselves or others in a less violent manner.</i>  |
| <i>Arresting an offender<br/>(s39 Crimes Act 1961)</i>          | <i>to arrest an offender if they:<br/>believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting their arrest, and<br/>the arrest cannot be reasonably effected in a less violent manner, and<br/>the arrest cannot be delayed without danger to other people.</i> |

|   |   |
|---|---|
| <p><i>Preventing escape</i><br/>(s40 Crimes Act 1961)</p> | <p><i>to prevent an offender escaping if:</i><br/><i>police believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person (whether an identifiable individual or members of the public at large), and</i><br/><i>the offender flees to avoid arrest or escapes after arrest, and</i><br/><i>the flight or escape cannot reasonably be prevented in a less violent manner.</i></p> |
| <p><i>Destroying animals</i></p>                          | <p><i>To destroy animals in circumstances set out in the Animals chapter of the Police Manual.”</i></p>   |

### Principles applying when offenders are armed

111. Police policy states that, when dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:

- *“Conduct an ongoing TENR assessment during the course of an incident.*
- *It is better to take the matter too seriously than too lightly.*
- *Caution is not cowardice.*
- *When the offender's actions permit, focus on de-escalation, communication, and prevention, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.*
- *Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, police must act immediately to prevent this.*
- *Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.*
- *Where practical, police should not use a firearm unless it can be done without endangering other persons.”*

### CONTROL AND COMMAND

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112. Police have adopted the Coordinated Incident Management System (CIMS) as the model for command, control and coordination of emergency incidents in New Zealand.

113. ‘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.

114. ‘Command’ refers to the authority that 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.

115. A 'Controller' is responsible for coordinating and controlling the response.
116. An Incident Controller has responsibility for the incident site. They will have an overview of all components of the incident site, controlling other agencies and commanding Police elements. This includes delegating tasks and directing activity to Police resources.
117. A Forward Commander is a person in charge of a specific task group and includes an officer in charge of an element of an operational response, such as AOS or cordons. A Forward Commander differs from an Incident Controller in that they are task specific and may not necessarily have an overall incident awareness, nor control any other elements deployed. Irrespective of the scale of an incident, the Controller will need to take all of these levels into account.
118. 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.
119. The District Command Centres (DCCs) exist to support or enable the control and command of critical incidents in the early stages. A relationship must exist between the Incident Controller and the DCC.
120. Control or command must not be seized or taken; it should be formally handed over. Any control and command handover must be a clear, recorded and agreed action. Any change in control or command must be communicated to all members involved in the operation as soon as practicable.

# 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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