



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Police shooting in Tangowahine justified

1. Just before 10am on 1 December 2020, officers approached a man who was wanted by Police, in Tangowahine, a rural area near Dargaville. The man attempted to run away and an officer released a Police dog, to capture him.
2. The man fired three shots towards the officers and dog, critically injuring the dog. An officer returned fire, shooting four shots towards the man, two of which hit him.
3. Police notified us of the incident and we conducted an independent investigation.
4. Our report was delayed until after Mr X's court hearing, when we believed he would speak with us. However, Mr X then declined to give his account.

The Authority's Findings

Issue 1: Was it appropriate for officers to arm themselves?

It was appropriate for officers to arm themselves.

Officers C and D should have both worn their front and back hard armour plates for their own safety.

Issue 2: Was Officer D justified in setting his Police dog onto Mr X?

Officer D was justified in using the dog to apprehend Mr X.

Issue 3: Was Officer D justified in shooting at Mr X?

Officer D was justified in firing all four shots at Mr X in defence of himself and other officers.

Issue 4: Did Police provide appropriate medical assistance immediately after the shooting?

Officers provided Mr X with prompt and appropriate medical care.

Analysis of the Issues

Background

5. Police considered Mr X to be one of the Top Five offenders in the district. Police Intelligence had distributed information to all officers in the area, saying:¹
 - Police had warrants to arrest Mr X for failing to appear at court in September 2020;
 - Mr X was facing four charges of unlawfully possessing firearms, and charges for the cultivation and possession of cannabis;
 - Mr X was involved in the methamphetamine scene;
 - Mr X was also wanted for failing to stop;
 - recent information has been received that Mr X was looking to source a firearm for protection;
 - Mr X was believed to be using a car (details of car included); and
 - Mr X was believed to be moving between the Kaikohe/Whangarei and Kaipara area.
6. On 1 December 2020, Officer A (sergeant) was rung by an off-duty officer, Officer B, who had just seen Mr X sitting on a fence, under a macrocarpa tree, in Tangowahine Valley Road.
7. Officer A enlisted the help of Officers C, D (dog handler), and E, who were at the Dargaville Police Station at the time. Officer A had not dealt with Mr X himself, but Officer C knew Mr X from previous dealings with him. Officers D and E were not usually stationed at Dargaville. They had no previous dealings with Mr X but were aware of the intelligence information (paragraph 5).
8. Officer A knew Mr X had been on the run for several weeks and that Police had very little information about his whereabouts of late. He believed this was the perfect opportunity to apprehend Mr X, while he had experienced officers and a dog unit available, which could be used if Mr X ran from Police. Officer A also believed Mr X's rural location meant there were unlikely to be members of the public around, which was preferable, given Mr X's involvement with methamphetamine and that it was unknown whether he had a firearm on him.
9. The place where Mr X had been seen was about 20 km away. Officer A was mindful that they needed to get there before Mr X moved on.
10. Officer A quickly briefed the officers, saying he and Officer C would take the lead, as Officer C knew the area well. Officers A and C would block Mr X's vehicle if he was in one. If Mr X ran, Officer D would challenge him. If Mr X still refused to stop, Officer D would use the dog to apprehend him.

¹ As a result of the arrest warrants, Mr X featured on Northland Police daily intelligence assessment and staff had also been sent a notification about the warrant to arrest and the alerts for uses/carries firearms.

11. During the briefing, Officer E rang Officer B to find out more information. Officer B agreed to drive back to see if Mr X was still in the same place and whether he had a car.
12. Officer E recalls Officer A pointed out a photo of Mr X on the station's most-wanted offender's wall, which also included the intelligence information.

ISSUE 1: WAS IT APPROPRIATE FOR OFFICERS TO ARM THEMSELVES?

13. Officer A instructed the officers to arm themselves because:
 - Mr X had been trying to source a firearm and they were unsure if he had one on him;
 - Mr X's involvement in the methamphetamine scene led Officer A to believe he may act in an unpredictable way; and
 - Mr X was clearly intent on evading Police as he had been on the run "*for weeks, if not months, at that time.*"
14. The officers armed themselves and reviewed their fire orders, as required by policy.²
15. According to the 'Police Firearms' policy, officers may carry firearms when their assessment of a situation is that there is an immediate threat, or a situation is likely to escalate to the point where there is the threat of death or grievous bodily harm. Therefore, it was appropriate for the officers to arm themselves, given what they knew about Mr X.
16. Officer C placed a Bushmaster rifle in the front passenger seat, where it would be accessible to Officer A, who would be the passenger. Officers C, D and E also armed themselves with Glocks.³
17. Policy says officers must wear the approved Hard Armour Plates (HAP) when going to an incident where they believe firearms could be present. The metal plates are worn over Stab Resistant Body Armour which provides additional protection of vital organs during incidents involving firearms.
18. Officers A and E had their front and back hard armour plates in. Officer C only had his front plate in, and Officer D had no hard armour plates in. Officer D says he finds them uncomfortable, and they impede his running, hurting his back.
19. While we appreciate Officer D, as a dog handler, often has to run long distances and the hard armour plates make this more difficult, they are necessary for his own protection when in a situation where firearms may be involved. Officers C and D should have both worn their front and back hard armour plates.
20. Officer A did not call the Armed Offenders Squad (AOS) as it would take them at least 45 minutes to arrive and he was confident in the officers' abilities. At that stage, they also had no credible evidence that Mr X actually had a firearm. Officer D, who was a member of the Armed Offenders

² Fire orders are instructions which set out the circumstances under which Police may use firearms. Officer A also told Police Communications they were armed. See paragraphs 96 to 102 for Police firearms policy.

³ The officers all 'actioned' their Glocks, loading a round into the pistol's chamber.

Squad (though not acting in that capacity in this incident), says he considered Mr X to be “*just another guy with a warrant to arrest.*” He told us: “*I wouldn’t expect AOS to get deployed on an offender who was trying to source a firearm.*” We agree the officers had no reason to involve the AOS at this point.

FINDINGS ON ISSUE 1

It was appropriate for officers to arm themselves.

Officers C and D should have both worn their front and back hard armour plates for their own safety.

ISSUE 2: WAS OFFICER D JUSTIFIED IN SETTING HIS POLICE DOG ONTO MR X?

21. While the officers travelled, under flashing lights, to Tangowahine Valley Road, Officer A had a text message conversation with Officer B. (Poor communication service meant they could not speak directly.) Officer B told Officer A what Mr X was wearing, that he had no shoes on, was wearing a backpack, and was now trying to hitch a ride towards town [Dargaville]. They planned for Officer B to keep an eye on Mr X’s location and actions, however, were aware Officer B would most likely lose reception and not be able to communicate with Officer A.
22. Officers A and C did not communicate the new information with the Emergency Communications Centre (NorthComms) or Officers D and E, who were travelling behind them. They were aware drug dealing offenders in the area had been using scanners to listen to Police radio communications, and they did not want them to tip off Mr X. They could not use a mobile phone due to the poor reception.
23. While travelling to the location, Officers D and E continued to plan. Officer D told Officer E that if Mr X ran, he would drive as close to Mr X as possible before getting out and using the dog. He told him he would leave the van running with the keys in the ignition, so Officer E could use it to try to cut off Mr X’s escape route and help apprehend him. Officer E was to be in charge of communications with the Emergency Communications Centre (NorthComms) as this would need to be done through a ‘link line’ in the car. Officer E says the focus of their conversation was around if Mr X ran from Police rather than if he had a firearm.
24. Officer E also looked Mr X up on his Police phone, to ensure they were confident they knew what Mr X looked like. They were unable to access further information in the Police database due to the poor reception.
25. As the officers approached Mr X’s location, in their marked Police vehicles, they saw Mr X standing by the passenger window of a red ute, which was facing towards the oncoming officers. Officer C immediately recognised Mr X and believed he was getting into the red ute. He pulled over, stopping in front of the ute, at an angle, to block it off.
26. When Mr X saw the two Police cars approaching, he immediately began running away from them.

27. Officer D drove around Officer C's patrol car and followed Mr X. As he closed in, Mr X cut left, across the road, and went over to the grass verge, to a seven-wire fence.⁴
28. Officer E got out of the patrol car and ran towards Mr X while Officer D got his dog out. Officer E yelled at Mr X, telling him to stop running and that they had a dog. Officer E says: *"I know he was hearing me. I know he heard something, but ... from the look on his face wasn't registering."* As Mr X climbed the fence: *"He had a sort of a glazed look on his face... and then kept running."*
29. Mr X sprinted along a dirt track, going down into a dip, through a row of trees, and up the other side of the dip, into a flat, open paddock.
30. Officer D approached the fence, holding his dog back. He could see Mr X running through the trees and could clearly see he was not carrying a weapon in his hands. Officer D believed the safest and least-forceful option available to him was to use the dog to apprehend Mr X.
31. Officer E says at this point, Mr X was about 6 or 7 metres away from them. He recalls Mr X was *"running quite fast but it's a sideways sort of motion. He's not focussing on where he's running completely... He's sort of trying to see what we're doing."*
32. Meanwhile, Officer C had moved his car up, behind Officer D's car. He and Officer A got out and joined Officers D and E in yelling at Mr X, who was now 10 - 20 metres away from them. The officers warned Mr X the dog would be released if he did not stop, however, he kept running.
33. Using the two handles on the dog's harness, Officer D lifted the dog over the fence, unleashed it, and commanded it to apprehend Mr X.
34. The dog took a few seconds to get its bearings, then ran towards Mr X. Officer D jumped over the fence and followed the dog. Officer C climbed over the fence and followed in behind Officer D.
35. Officer A stayed on the roadside of the fence and moved along the tree line to get a view of the dog apprehending Mr X. Officers B and E also stayed on the roadside of the fence.

Was Officer A legally justified in setting the Police dog onto Mr X?

36. Section 40 empowers Police to use *"such force as may be necessary"* to prevent the escape of someone who takes to flight in order to avoid arrest.⁵

Did Officer D believe on reasonable grounds that Mr X was fleeing to avoid arrest?

37. Mr X:
 - had been evading Police for weeks prior to this incident;
 - fled on foot when he saw the two Police cars; and

⁴ A typical fence, with posts, battens, and seven strung wires.

⁵ See paragraphs 103 to 107 for Police policy on the use of force.

- did not stop, despite the four officers instructing him to do so, even when warned a dog would be used on him if he did not stop.

38. Officer D had reasonable grounds to believe Mr X was fleeing to avoid arrest.

Was Officer D's use of force to prevent Mr X's escape reasonable and proportionate when weighed against the offences for which Mr X was to be arrested and the likelihood and severity of the risk that he posed?

39. Mr X's firearms and drug offences, warrants, and evasion of Police, led to him being one of the area's Top Five most-wanted offenders (see paragraph 5). The seriousness of his offences and his persistence in evading Police justified Police using force to arrest him.
40. Officer D says, because it was an isolated rural environment, he believed it was the safest place to apprehend Mr X as it would minimise the risk to the public. He knew Mr X was a dangerous offender who needed to be apprehended as soon as possible *"to protect the public and local community and this was the best and only opportunity Police had to successfully complete this."*
41. Mr X was running too quickly and was too far away for lesser-force options, such as a Taser or pepper-spray, to be used.
42. Officer D says Police dogs are the ideal tactical option in circumstances like this: a dog can run 40 kph, so is better able to catch a fast-running offender who is actively trying to escape from Police, especially given Police officers are weighed down from cumbersome gear.
43. We note the accounts of everyone present are that Mr X was given ample warning that the dog would be released if he did not stop running, as required by policy.
44. Officer D was justified in releasing the dog to apprehend Mr X.

FINDING ON ISSUE 2

Officer D was justified in using the dog to apprehend Mr X.

WAS OFFICER D JUSTIFIED IN SHOOTING AT MR X?

45. Officer D was about 30 metres behind Mr X. His dog was between him and Mr X, moving at a jog-like speed.
46. As Mr X ran, he began taking his backpack off his shoulders while running, trying to unzip it. When he was about 50 metres into the paddock, he put the backpack on the ground, crouched down, and reached into it.⁶
47. Officer D initially thought Mr X was reaching into his backpack to *"biff his drugs and then hope like hell we can't find them."* He recalls also considering that Mr X may be reaching for a weapon, such as a knife, given the small size of the backpack. He did not expect Mr X to pull out a firearm.

⁶ He was facing towards the officers, in a sideways-type position.

48. Officer D then saw Mr X pulled out a large, long barrelled Smith & Wesson type revolver. The gun had a long barrel and was like a target revolver used to shoot long range. Officer D says, when he saw the size of it, he thought: *"I really hope that's not real because if it was we're in deep shit."*
49. Officer D yelled at Mr X, but cannot recall what he said. Officer C, who was behind Officer D, recalls hearing him yelling for Mr X to put down the gun. Neither officer recall Mr X saying anything.
50. According to Officer D, Mr X held the revolver with both hands, then *"turned, levelled the pistol [revolver] so it was pointing at me and then discharged the weapon."*
51. Officer D could tell from the loud shot that the revolver was large calibre and would cause a lot of damage if it hit any of the officers. He knew Mr X's revolver would be more accurate over the long distance, than what the officers' Glucks would be.
52. Officer D did not know where the round had gone but could not feel any pain so did not believe he had been hit. However, he knew his colleagues were somewhere behind him and did not know if they had been hit. He says:
- "This was the most dangerous, life-threatening situation I had been in and I knew I had to defend my life and that of my colleagues."*
53. Officer D was still about 30 metres from Mr X, who was shooting at him. Officer D recalls thinking that he was too far away to be effective with his Glock, but deciding that he would just have to try to do his best. He says he felt *"outgunned,"* a bit scared, and that he did not have a choice. *"I was not just going to turn around and run away and end up with a big hole in my back. And my mates end up with a hole in their back."* He says he and officers behind him had nowhere to hide in the paddock: *"... there was nothing else I could do... I thought... if I don't defend myself and my colleagues, one of us or, or two or three of us... might die."*
54. Officer D drew his Glock and returned fire. He says his first shot was *"pretty reactive"*, but he then stopped and tried to aim at Mr X's 'centre mass'. Officer D explained:
- "...because I'm aiming at [Mr X's] centre mass I'm kind of only seeing what my peripheral vision allows me to see ... my firearm is blocking out a lot of the offender... my front sight was covering his whole centre mass, that's why at the time I was thinking like there's no way I'm going to hit him from this distance, but I don't have a choice. I have to try because he's going to hit us. I kind of was firing thinking I've just got to give it my best shot because we're going to die."*
55. Officer D says his shots seemed to have little effect on Mr X. Mr X fired more shots in the direction of Police.
56. Officer D recalls that while looking down his sights at Mr X, he could see, using his peripheral vision, his dog continuing to move towards Mr X. In his recollection, when the dog was about a metre away from Mr X, Mr X pointed his revolver down towards the dog, point-blank, and fired

a shot. Officer D says he was exchanging fire at the time, focussing on Mr X, so did not know how the dog reacted to the shot but recalls the dog then disappeared from his view.

57. Officer D says: *"I don't know the number of shots I fired and then all of a sudden I'm looking at the paddock and [Mr X's] no longer standing there."*
58. Officer D scanned the area and saw Mr X was lying on his side on the ground, facing him, with the revolver still in his hands.
59. Standing about 25-30 metres away from Mr X, Officer D aimed at his shins and fired one more shot. Officer D later told us he fired at Mr X's leg as: *"I'm not trying to kill him; I don't want him to die but I don't want to die and I don't want my colleagues to die. I just want him to drop the gun...."*
60. Officer D recalls seeing dirt *"fly up"* and correctly believed he had missed Mr X. However, the shot had the desired effect of causing Mr X to let go of his revolver.
61. After dropping the revolver, Mr X faced his palms towards Officer D and lifted his hands up in a surrendering pose, yelling *"You shot me. You shot me."* Officer D's shots had wounded his stomach, hip, and right arm.
62. Mr X was lying on his left-hand side. The revolver was lying directly under his hands on the ground and Officer D realised Mr X would be easily able to pick it up again. He kept yelling at Mr X to not touch the revolver, while moving towards him and continuing to point his Glock at him.
63. Officer C, also with his firearm raised at Mr X, assisted, moving the revolver away from Mr X.
64. Officer D recalls seeing *"out the corner of my eyes"*, the dog standing to the side while Mr X was lying on the ground, still holding the revolver. The next time he recalls seeing him was when he was assisting with Mr X and the dog came up against his leg, and leaned on him, with blood *"just hosing out everywhere."* The dog had been shot in the head by Mr X and suffered extensive injuries to his nose, mouth, and jaw.

What did other witnesses see?

65. Officer C was positioned behind Officer D, though he is unsure of the distance between them. His view of what happened was limited as he could only see Officer D's back. He heard Officer D shouting at Mr X to put the gun down and heard the volley of shots, which were fired before Officer C broke through the treeline. He then moved out towards Officer D's shoulder and approached Mr X with Officer D.
66. Officer A was up by the road. He saw Mr X get his revolver out. He had just turned to go to the patrol car to retrieve his Bushmaster when he heard the volley of shots.
67. Officer B was standing by a car. Officer B heard the shots being fired but did not see the shooting.

68. The driver of the red ute saw Mr X run through the gap in the trees and into the paddock before his view became blocked by the trees. He also heard the shots but did not see the shooting. Officer B instructed him to leave immediately after the shots were fired, which he did.
69. Officer E, who was standing by the fence, saw Mr X pull the revolver out of his backpack. He recalls screaming: *"He's got a gun."* He says he had a clear view of Mr X at this point through the trees, and confirms it was Mr X who fired the first shot.
70. According to Officer E's recollection, Mr X fired his first shot at the dog, when it got within 2-3 metres of him. Officer E recalls the dog had been going directly towards Mr X, then, after hearing a 'bang,' it began *"sort of running wild... like zig-zagging... lost focus, like it was confused."*
71. Officer E recalls, after the exchange of shots, Mr X was lying on the ground, propping himself up with his left hand. However, he could not see where the revolver was or what Mr X was doing with his right hand.
72. We do not have Mr X's version of events as he declined to speak with us.

Was Officer D justified in firing at Mr X?

73. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
74. To rely on a defence under section 48, the individual officer's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
 - a) What were the circumstances as the officer believed them to be? (a subjective test)
 - b) Was the officer's use of force against Mr X for the purpose of defending himself or another? (a subjective test)
 - c) Was the officer's use of force against Mr X reasonable in the circumstances as the officer believed them to be? (an objective test)

What did Officer D believe the circumstances to be?

75. When Officer D saw Mr X take the revolver out of his backpack, he immediately became fearful of the damage it could inflict. He believed it's long barrel would enable Mr X to shoot more accurately than the officers' Glocks, given the distance between them. He also believed Mr X intended to use the revolver against him and his fellow officers.
76. When Mr X fired the first shot towards the officers, Officer D immediately thought: *"I'm going to die, maybe one of the other guys has already been hit and dying."* He says he could not hear anyone screaming so *"was hoping like hell it had missed everyone"* behind him.
77. Officer D believed there was a high chance that Mr X was going to hit him or one of the officers. Mr X appeared to have experience in holding a revolver and *"knew what he was doing"* with it. He was holding it with two hands to maximise steadiness and the accuracy of the shots, as a

person would who has been trained. He says: “... it wasn’t like they were just random shots, they were well aimed, well executed shots....”

Was Officer D’s use of force for the purpose of defending himself or another?

78. We accept Officer D shot at Mr X to defend himself and the other officers, in response to Mr X firing towards them.

Was Officer D’s use of force against Mr X reasonable in the circumstances as he believed them to be?

79. Officer D says, when Mr X started firing, there was nowhere close enough for him to take cover or hide, and he was too close to Mr X to turn and run. Given his distance from Mr X, he could not use a Taser or pepper spray. His dog had already been sent to apprehend Mr X but had not incapacitated him before Mr X began firing.

80. Officer D says:

“...the only realistic option for me at that stage was to return fire in an attempt to incapacitate [Mr X] to save my life and to save the life of my colleagues... it had to be done. It was shoot or be shot.”

81. We are satisfied Officer D had no other option but to return fire.

82. Officer D’s first three shots were in quick succession, in an exchange of fire, during which, Mr X also fired three shots. By all accounts, the exchange of fire only took place over a few seconds.

83. Officer D says: “I kept firing until I was confident that the threat was incapacitated.” Based on all of the accounts, we are satisfied Officer D stopped firing when Mr X stopped firing and dropped to the ground.

84. Officer D was up to 30 metres away from Mr X when he saw him lying on his left side, with both hands still holding his revolver and pointing it towards him. Both Mr X’s hands were still clenching the revolver, pointing it in the direction of the officers, at ground level. Although Mr X was lying on the ground, “kind of incapacitated,” Officer D believed he could still shoot at the officers again at any time, so fired one more shot. By shooting Mr X in the leg, he hoped to cause him enough pain to make him drop the revolver.

85. Mr X had not responded to verbal communication throughout the entire incident and, despite already being injured, did not drop the revolver of his own accord. He had shot at Police and had shown an intent to cause them serious harm. Therefore, it was reasonable for Officer D to fire this last shot, causing him to drop his weapon. We accept there were no other lesser-force options available to Officer D given the threat Mr X still posed to him and his fellow officers.

FINDING ON ISSUE 3

Officer D was justified in firing all four shots at Mr X in defence of himself and other officers.

ISSUE 3: DID POLICE PROVIDE PROMPT AND APPROPRIATE MEDICAL ATTENTION TO MR X?

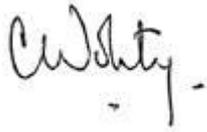
86. Once Mr X dropped his firearm, Officers C and D were able to place him in handcuffs.
87. Officer A ran across the paddock as soon as the shooting stopped. He and Officer C assessed Mr X's injuries and immediately applied first aid.
88. Officer D called for an ambulance and for Officer E to bring the first aid kit from the car. Records show at 9.52am, officers told NorthComms Mr X had been shot and an ambulance was urgently needed. The ambulance arrived on scene at 10.13am. A rescue helicopter was also called.
89. The officers were mindful of poor transmission hampering their communications. Subsequently, Officer E used the radios in the patrol cars to ensure NorthComms were updated and receiving communications.⁷
90. Once Officer D was confident Mr X was getting the medical treatment he needed and he was not needed further, he carried his dog to his car and took it directly to a veterinarian in Dargaville. While driving there, Officer D passed the ambulance which was on its way to attend to Mr X.
91. Medical professionals believe the wounds to Mr X's stomach, hip, and right arm were most likely caused by two shots, though it was possibly three. He had internal injuries and underwent multiple surgeries.
92. The dog also underwent surgery and multiple procedures.
93. Both Mr X and the dog survived being shot.
94. We are satisfied the officers provided Mr X with immediate first aid and sought medical assistance in a timely manner.

FINDING ON ISSUE 3

Officers provided Mr X with prompt and appropriate medical care.

⁷ Officer E communicated from Officer D's patrol car first, then moved to Officer C's patrol car, when Officer D needed his car to transport the dog to the veterinarian.

95. We acknowledge Police officers are daily facing fast-changing, dynamic situations. Even though Mr X had evaded Police for some time, Officer D thought he was executing a 'routine' warrant yet found himself unexpectedly being shot at. He responded appropriately and bravely to defend himself and the lives of his colleagues. We commend him for his actions.

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

Judge Colin Doherty

Chair
Independent Police Conduct Authority

18 October 2022

IPCA: 20-5756

Appendix – Laws and Policies

POLICY

'Police firearms' policy

96. The New Zealand Police are not routinely armed. As such, it is recognised that firearms need to be made available for deployment in such a way that they are accessible, depending on the situation.
97. Employees who carry firearms because their assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the Tactical Options Framework must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable.
98. With the exception of specialist groups, employees must wear ballistic body armour when deploying to an incident where they believe firearms are or could be present. This includes circumstances where routine carriage of firearms has been authorised in response to a specific threat.
99. When dealing with an armed offender or an offender believed to be armed, these basic principles apply:
 - An ongoing risk assessment should be conducted 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, 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.
100. 'Fire Orders' are operationally specific instructions on the circumstances in which Police employees may use firearms.
101. 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. Any employee who fires a shot must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so.

102. An offender must not be shot without first considering communication (asking them to surrender) unless it impractical or unsafe to do so. Officers must consider where there are less violent alternatives and whether any further delay in apprehending the offender would be dangerous or impractical.

'Use of force' policy

103. The Police's '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, retrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, tasers and firearms.
104. Police policy provides a Tactical Options Framework (TOF) 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 assessment as the TENR (Threat, Exposure, Necessity and Response).
105. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved, and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location, and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
106. A key part of an officer's decision 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.
107. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public, and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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?

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

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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