

³ Section 202C of the Crimes Act 1961.

of our investigation until the conclusion of Officer A's trial and consideration of the evidence given at it.

The Authority's Findings

7. The Authority's investigation is not for the purpose of determining whether the officers are criminally liable for their actions. Our task under section 27(1) of the Independent Police Conduct Authority Act 1988 is to:

"form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which was the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable".

8. In forming our opinion, we adopt a standard of proof that is lower than the criminal standard. That is because our task relates to oversight of Police conduct, not the application of the criminal law. In matters alleging serious misconduct by officers, we are always mindful that the strength of the evidence upon which we base that opinion must be high. That said, we use the same standard of proof applied in the civil courts in New Zealand – the balance of probabilities (which means *"more likely than not"*).
9. The Authority interviewed Officers A and B, the Corrections officers involved, and Mr X. We reviewed all Police documentation and relevant footage. We also reviewed the Notes of Evidence from Officer A's trial.

Issue 1: Was it appropriate for Officer B to carry a Taser in the court custody area?

Police officers in the Bay of Plenty Police District, including Officer B, carried Tasers in court custody areas in contravention of Police policy. They wrongly believed they had a

Issue 2: Was Officer A justified in discharging the Taser on each of the three occasions?

Officer A was not justified in firing his Taser on any of the three occasions because he did not genuinely perceive a serious and imminent threat at the time and did not act to defend himself. He used the Taser to induce compliance and by doing so used excessive force.

Issue 3: Did Police correctly carry out post-incident procedures?

Police did not follow post-Taser procedures properly. However, Mr X received adequate medical assistance.

Analysis of the Issues

ISSUE 1: WAS IT APPROPRIATE FOR OFFICER B TO CARRY A TASER IN THE COURT CUSTODY AREA?

10. Police policy at the time of this incident stated that a Taser should not be routinely carried in court custody areas, and staff entering custodial areas should remove and secure the Taser beforehand (see the relevant policy in paragraph 99).
11. Officer A told us he was aware a named District Court Judge verbally authorised Police officers to wear Tasers in the Tauranga court custody area following a discussion with Officer A's supervisor due to an increase in prisoner violence. Corrections staff we interviewed confirmed that Tasers were routinely worn in the Tauranga and Rotorua District Courts at the time of this incident.
12. At the beginning of his shift on 4 February 2019, Officer B (a probationary constable with less than a month's service) armed himself with a Taser thinking that he was going to be working as a frontline responder.⁴ He conducted the required pre-operational checks and holstered the Taser. However, he was then directed to work in the court custody area with Officer A. Officer B continued to carry the Taser in the custody area until Officer A took it from him before entering Mr X's cell.
13. Although Officer A did not say that the Judge made a formal order regarding Taser carriage in court, this would be the normal procedure. Neither Police nor the court registry could find a copy of a written order. We then spoke directly to the then Executive Judge for the region who said he had not made such an order, and that Taser carriage in the court custody area was an issue for Police to decide.
14. We spoke to the supervisor responsible for Police custody in Tauranga at the time. He recalls staff asking to wear Tasers routinely in the custody area, and the Judge's response that it was a matter for Police to decide. The supervisor did not authorise staff to do so, as both national and district policy did not permit routine carriage of Tasers in custody areas.
15. It appears that some Police officers in the Bay of Plenty Police District have been carrying Tasers in court custody areas in breach of Police policy, wrongly believing that they have judicial permission to do so.
16. On the basis of that widely held misapprehension, Officer B continued wearing his Taser when he worked in the court custody area, when he should not have done so.

⁴ Probationary constables are temporary sworn members of Police who have graduated from the Royal New Zealand Police College. They must successfully complete further training before being appointed as a permanent constable.

FINDING ON ISSUE 1

Police officers in the Bay of Plenty Police District, including Officer B, have been carrying Tasers in court custody areas in contravention of Police policy. They wrongly believed they had a District Court Judge's permission to do so.

ISSUE 2: WAS OFFICER A JUSTIFIED IN DISCHARGING THE TASER?

Events before the officers entered Mr X's cell

17. On 4 February 2019, Officer A was the senior Police officer on duty in the custody area of the Tauranga District Court.⁵ Two colleagues were on leave, so Officer B was assigned (at late notice) to help him. Three Corrections officers also based in the custody area assisted Police when time permitted.
18. Mr X, along with other prisoners, was taken from custody in Tauranga Police Station to appear in court that morning. He was placed in a holding cell with two other prisoners. He then became agitated and wanted to leave. After following another prisoner out of the holding cell he would then not go back inside when Officer A directed him to.
19. This incident was captured on CCTV. Officer A picked Mr X up under his arms and attempted to carry him forward into the cell, but Mr X resisted by bracing his legs and hands on the doorway. Two Corrections officers came to help. Officer A and one of the Corrections officers forced him back into the cell, and Officer A had to push Mr X back several times to stop him from leaving the cell again. Finally, Officer A had to force the door shut after Mr X wedged himself in the doorframe as Officer A tried to close it. Officer A said Mr X demonstrated "*surprising determination, strength and speed*" which formed part of his ongoing assessment of Mr X's behaviour and capabilities as the day progressed.
20. Throughout the morning, Mr X intermittently screamed, whistled and kicked the cell door. At other times he sat quietly in the corner of the cell. Officer A decided that Mr X was too much of a risk to appear in court that morning and rang the local Crisis Assessment Team to come and assess him. Officer A also organised another experienced mental health professional to visit Mr X, but he would not talk to her.
21. Rather than dealing with him in the courtroom, a Community Magistrate conducted a hearing outside Mr X's cell and remanded him in custody so that he could be assessed when the Crisis Assessment Team was available in the late afternoon or evening. Mr X needed to be moved back to Tauranga Police Station to await assessment, as the Court did not have overnight custody facilities.
22. At 2.30pm, Officers A and B and the three Corrections officers gathered outside Mr X's cell. Officer A explained to the Authority that this was the only time that all officers would be available to help move Mr X, as the various courts were about to resume.

⁵ At the time of this incident, Officer A had more than 30 years of Police experience.

23. Officer A said they planned that Corrections Officer C would speak to Mr X from the cell door and coax him into wearing handcuffs and cooperating with the officers. Officer A purposely stayed out of sight at this point as Mr X had become increasingly hostile towards him throughout the day. However, Mr X refused to co-operate and said that they would have to “*drag him out.*”
24. Officer A said he took charge and asked Officer B for his Taser. The Corrections officers were unaware Officer A was now armed with a Taser.

Footage of events in the cell

25. What happened next was largely captured on CCTV footage (which does not include an audio component) and TaserCam footage (which does include audio).⁶ The CCTV camera is positioned in the top right-hand corner of the cell, so the view is angled downwards. This means that people’s facial expressions are not clearly visible when they are not looking towards the front of the cell, and people’s heads are not visible when they are positioned towards the back of the cell. There is also a permanent pixelation covering the toilet area, towards the back left of the cell.
26. Footage shows:
- 1) Officer A enters the cell first with the Taser pointed towards Mr X and walks towards the far-right corner of the cell. Mr X is in the front left corner and walks towards Officer A, who points towards the open cell door.
 - 2) Mr X steps to within a metre of Officer A who pushes him back several paces with his left hand, still holding the Taser pointed towards Mr X with his right hand. Mr X takes another step towards Officer A and is pushed back again, as Officer B and Corrections Officer C enter the cell.
 - 3) Officer B and Corrections Officer C move forward to restrain Mr X, who struggles. Corrections Officers D and E enter. Corrections Officer D goes forward to help restrain Mr X who has backed into a corner between a bench and toilet screen.
 - 4) Officer A remains at a distance, with his left hand pointing towards Mr X. After initially lowering the Taser, he points it towards Mr X again. Officer A later told us he called “*Taser, Taser, Taser*” at this point. All three officers, who were in the process of restraining Mr X, let go and step back.
 - 5) Officer A turns the Taser on (activating the TaserCam and audio recorder). The footage shows that Mr X steps forward and beckons towards Officer A with a ‘come on’ gesture. He says: “*Why don’t you kill me?*”. Officer A fires the Taser.
 - 6) Mr X grabs his left arm and slides down the toilet screen to the floor while screaming. The cycle (time period during which the electric current flows) lasts five seconds.

⁶ A Taser has an inbuilt video camera (TaserCam) which activates automatically when the Taser is turned on.

- 7) When the cycle ends, Mr X lies on his back with his head and shoulders propped against the toilet screen and cell wall. Officer A tells Mr X to stay on the ground. At the same time Mr X brings his knees up to his chest, looks at Officer A angrily and swears. He then relaxes his face, takes a breath and looks down at his chest. He picks a probe from his clothing with his left hand, glancing up at Officer A. Officer A fires the Taser, and two more probes enter Mr X who screams.
 - 8) After the five-second cycle ends, Mr X lies on his right side facing away from Officer A. He turns to look at Officer A. His eyes are unfocused, and he looks dazed. Officer A tells Mr X *“there’s another one in there”* and he is to stay where he is and put his hands behind his back. Mr X starts slowly rolling onto his back towards Officer A, who fires the Taser for three seconds. Mr X starts screaming.
 - 9) While the cycle is ending, Officer A directs Mr X to put his hands behind his back. He tells Officer B (who is stepping forward with handcuffs) to stay back. Mr X complies and lies on his stomach. Officer B handcuffs him. The TaserCam footage ends at this point.
 - 10) CCTV footage shows Mr X being lifted to his feet and escorted out by two Corrections officers. Officer A grins at Officer B, who is standing by the cell door. Officer A holds both arms out to the side and wriggles his body in what looks like a short dance. He picks some items off the floor and leaves the cell.
27. One minute and fifty-five seconds elapsed from the time that Officer A entered the cell with the Taser until Officer A left the cell. Thirty-one seconds elapsed between the start of the first Taser discharge and the end of the third discharge cycle.

Officer A’s evidence

28. Officer A provided three accounts of what happened; two to Police and one to us. Officer A also provided an account to the Court during his trial.
29. The three accounts Officer A provided prior to his trial varied slightly between the narrative given in his Tactical Options Report (completed a few days after the incident), his interview with Police (conducted more than six months after the incident) and his interview with us (seven months after the incident).⁷ Officer A had not seen the CCTV footage prior to giving two accounts to Police, but had viewed it prior to interview with the Authority.
30. The discrepancies relate to matters of detail: the order in which the officers entered the cell; how Officer A carried the Taser when he entered the cell; the number of Taser discharges; and Mr X’s movements towards Officer A.
31. Officer A’s account that he felt threatened, and his rationale for using force against Mr X, remained consistent between all three accounts.

⁷ An officer is required to complete a Tactical Options Report when they have used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

32. The factual discrepancies caused us to consider Officer A's credibility and ability to recall events accurately. When interviewed, Officer A acknowledged that there were differences between his first two accounts. He explained that his memory has been affected by a series of head injuries and has provided medical evidence confirming that this is the case.
33. Officer A also gave this explanation during his trial. He particularly noted he has difficulty remembering events in the correct sequence.
34. We have taken his condition into account when assessing the totality of evidence.

Assessment of Officer A's justification for firing the Taser

Self-defence and defence of others

35. Section 48 of the Crimes Act 1961 provides legal justification for any person, including a Police officer, to use reasonable force in defence of themselves or another. The reasonableness of the force is assessed in the context of the circumstances the person believed existed at the time they used force.⁸ Officer A said he fired the Taser at Mr X in self-defence and in defence of his colleagues on all three occasions.
36. To rely on this justification for his use of force, Officer A's actions must be assessed on both a subjective and objective basis. The assessment involves three questions:
- 1) What did Officer A believe the circumstances to be at the time he discharged the Taser?
 - 2) Was Officer A's use of the Taser for the purpose of defending himself or others?
 - 3) If so, was the use of the Taser reasonable in the circumstances as Officer A believed them to be?

Question 1: What did Officer A believe the circumstances to be each time he discharged the Taser?

37. Officer A had dealt with Mr X throughout the day. He told us that he had a number of concerns before entering Mr X's cell:
- Mr X's mental illness and heightened state made him unpredictable, abnormally strong, "lightning fast," and less responsive to pain. Although Mr X was a small man (short and approximately 70kg) and Officer A is 5'11" tall and 110kg when dressed in his equipment, Officer A said he believed Mr X was a physical match for him.
 - He was wary of entering Mr X's cell because Mr X could rapidly move from lying or sitting on the floor to "getting in my face." Mr X's aggression increased during the morning and Mr X threatened him twice.
 - He thought he only had a small window of time when other officers would be available to help move Mr X. No other help was likely to be available.

⁸ The section is set out in full in paragraph 85.

- He was worried about his own safety and that of his colleagues. The Corrections officers each had injuries or illnesses, and Officer B was inexperienced.

First use of the Taser

38. When he entered the cell, Officer A said Mr X *“engaged me immediately and went for me. I had to push him off twice with my left hand and to keep the Taser out of his reach.”* Corrections Officer C and another officer tried to restrain Mr X, but Officer A *“saw [Corrections Officer C’s] head snap back like he’d ... received an upper cut or something.”*
39. In his evidence to the Court, Officer A agreed that it was not possible to see Corrections Officer C’s head in the footage as it was out of frame. However, it was possible to see *“his shoulder rise a little”*, which Officer A says he believed at the time was Mr X striking Corrections Officer C.
40. Officer A also told the Court that Mr X pushed Officer B away from him. This was not something he had mentioned in any of his previous accounts.
41. Officer A said that he now believed that Mr X was assaultive, and he had few options to respond because:⁹
- The Corrections officers and Officer B weren’t capable of safely restraining Mr X without exerting significant force and hurting themselves or Mr X;
 - Pepper spray or gel was unlikely to affect Mr X because he was in a heightened state, but would likely affect him and the other officers; and
 - He did not have time to draw his baton from his belt pouch.
42. Officer A showed the Taser and gave the warning to deter Mr X and alert his colleagues to the presence of the Taser. He states that Mr X then threatened to kill him and clarified in Court that this was a different comment to what was recorded by the TaserCam (see paragraph 58). He turned the Taser on. Mr X started to move towards him, with his right hand clenched. He believed that Mr X was about to assault him and fired the Taser:

“[Mr X] said then that he was going to kill me and went for me. Normally when he goes for me his arms aren’t up as in a fighting stance but this time it was. I pushed him back with my left hand and I believed an attack was imminent...”

Second use of the Taser

43. Once the Taser cycle ended, Officer A said he saw Mr X pull a Taser probe from his abdomen, play with it, look at him intently and start to get up. Officer A said Mr X had the same ‘look’ in his eye which had preceded his rapid approach towards Officer A throughout the morning. He told the Court that Mr X’s movements were not compliant with instructions so he could be handcuffed because:

⁹ Police policy defines ‘assaultive’ as *“intent to cause harm, expressed verbally and/or through body language and/or physical action.”*

“Instead of rolling clockwise so that he’s on his stomach, he rolls anticlockwise and appears to be trying to get up.”

44. Officer A also told the Court that the TaserCam footage shows Mr X *“reaching out with his left-hand to the bench and I anticipate this is his attempt to rise at me.”*
45. He told Mr X to stay down but he feared that Mr X was about to attack him, using the Taser probe as a weapon: *“I had a very clear thought in my mind that he was gonna stab me in the eye with the probe.”* He fired the Taser because he believed an attack was imminent.

Third use of the Taser

46. Officer A said he could not see whether Mr X still had the probe in his hand at the end of the second Taser cycle, so he perceived a threat still existed. He told Officer B not to approach and handcuff Mr X because he thought the risk of an officer being close to Mr X when he was holding a sharp weapon was still too great.
47. Officer A said he didn’t have time to tell Mr X to drop the probe because Mr X started to roll onto his back, which he believed was Mr X getting up. He had the same ‘look’ in his eye. Again, Officer A believed Mr X was about to attack him, and he pressed a button causing an electric current to flow through the embedded probes into Mr X.
48. At the end of the cycle, Mr X had dropped the probe and remained still on the ground. It was therefore safe for Officer B to handcuff him.

Were Officer A’s stated beliefs genuinely held at the time of the discharges?

49. It is necessary to test whether Officer A’s stated beliefs were genuinely held at the time. We do this by assessing Officer A’s evidence against other evidence for plausibility, and by assessing Officer A’s overall credibility.
50. All three Corrections officers’ accounts support Officer A’s observation that Mr X was aggressive towards Officer A. They say Mr X’s behaviour was volatile, disruptive and confrontational throughout the morning. Once they entered the cell, he became assaultive and lunged towards Officer A before he was tasered the first time. Corrections Officers D and E describe Mr X lunging at Officer A multiple times. All three describe Mr X issuing some sort of verbal challenge or threat at the start of the interaction.
51. Corrections Officer C, the Corrections supervisor, described Mr X as a *“significant threat”* and believed Officer A’s actions protected staff and Mr X, himself, from more significant injury.
52. By contrast, Officer B told us he did not feel threatened by Mr X and did not think he was assaultive. Officer B told us he felt Mr X’s behaviour was ‘active resistant’ (defined as behaviour that is more than *“verbal defiance”* and includes physical actions such as pulling, pushing or running away). During the trial, Officer B described Mr X as being in an *“agitated state... quite quick to anger, aggressive, make outbursts....”* He described Mr X’s demeanour as *“pretty hostile throughout.”*

53. The evidence provided by Officer A and the Corrections officers about the threat Mr X posed prior to all three Taser discharges paints a strong picture of an aggressive detainee posing a significant threat to the officers trying to transfer him from the cell.
54. Problematically, this impression appears to us to be completely inconsistent with what we see in the combined CCTV and Taser footage.
55. The Corrections officers were, understandably, frustrated with Mr X's behaviour, and welcomed Officer A's decisive response. However, when speaking to them, we felt these views influenced their recollections and judgment.
56. Therefore, although the Corrections officers' evidence may be their genuinely held recollection of events, ultimately, we prefer the CCTV and TaserCam footage as providing the most accurate and objective account of what happened. It provides what we consider to be a clear and unambiguous account of the sequence of events, the participants' relative positions and their body-language where audio is unavailable.
57. The CCTV footage shows that, prior to the first discharge, Mr X appears angry and resisting the officers, but he does not appear to be physically threatening them.
58. There is no evidence of Corrections Officer C or Officer B being punched or pushed away by Mr X while trying to restrain him. Neither action is indicated in the CCTV footage as Officer A describes. Corrections Officer C later confirmed he was not punched but thought Officer A was. Officer B did not tell us that Mr X pushed him, nor did he say so in Court.
59. The TaserCam audio recorded Mr X inviting Officer A to "*kill me*" rather than threatening Officer A himself (see paragraph 26.5). However, Officer A says that Mr X made the threat earlier and it was not captured by the TaserCam audio, so it was not a case of mishearing what Mr X said.
60. Mr X denies threatening to kill Police. Corrections Officers C and E recall Mr X threatening to fight the officers rather than comply with Police instructions. Corrections Officer D told us that Mr X said: "*You'll have to fight me, I'll kill you*" at some point before he was tasered for the first time. As Corrections Officer D was not specific about when exactly he heard the comment it is possible that he is recalling and misinterpreting the comment that was captured on the TaserCam audio (see paragraph 59).
61. There is a conflict in evidence about whether Mr X threatened to kill Officer A that we cannot resolve. Both Mr X and Officer A have unreliable recall. It is not possible to use the CCTV footage to establish whether Mr X was speaking before the Taser was activated, as his head is out of frame.
62. Even if it is accepted that Officer A is truthfully recounting his recollection, the question remains whether he could plausibly have believed at the time that any threatening statement Mr X made presented a likely, serious and imminent threat given Officer A's ability to step away from Mr X, and the number of officers available to restrain Mr X. At this stage, Mr X did not have a probe in his hand.

63. We cannot perceive any form of serious threat in Mr X's actions prior to the second and third discharges. Prior to the second discharge, Mr X does not get up, nor has he moved towards Officer A. Prior to the third discharge, Mr X looks dazed rather than aggressive, and his movements look like an attempt to comply with instructions.
64. The obvious conclusion is that Officer A cannot have perceived that Mr X posed a threat on any of the occasions when he fired the Taser. His account of the threat he faced is increasingly implausible with each successive discharge.
65. However, having met and spoken to Officer A, we do not think he is intentionally trying to mislead us about what happened. More likely he has constructed this story to fit the events after the fact, and he now believes this version to be true. This version has subsequently been reinforced through repeatedly watching the footage frame-by-frame in preparation for court. In short, his recollection is unreliable, but not dishonest.
66. This would also explain Officer A's emphatic denial to us that he performed a short dance after Mr X was removed from the cell. The movement captured on CCTV can clearly be characterised as a celebratory dance, but this does not fit with the narrative that Officer A has constructed for himself. When asked at trial about the apparent dance, he said that he does not recall the movement, but accepts that he looks happy in the footage. He went on to explain:

"But clearly there was some movement in that particular way and I was certainly smiling, I was extremely happy that this incident was over in two minutes and no one got hurt, including [Mr X], he had three sticking plasters put on him, none of the officers were hurt and I wasn't hurt and in [a] short frame of time the decision-making through that achieved its purpose in a very short period of time very safely...."

67. We find it perplexing that Officer A maintains Mr X was unharmed after being tasered three times. Officer A clarified his view by stating he accepts that the discharges would have caused temporary pain and incapacitation, but not physical injury. We find the distinction irrelevant. The footage indicates Mr X suffered significantly during the Taser cycles which caused debilitating electrical current to pass through his body. This, in our view, was harmful to Mr X.
68. Based on all the evidence, we are satisfied that Officer A cannot have believed that he was facing an imminent and serious threat prior to each Taser charge, as he states. However, we accept that he now genuinely believes that he did.

Question 2: Was Officer A's use of the Taser for the purpose of defending himself or others?

69. Having reached the conclusion that Officer A did not perceive an imminent and serious threat prior to each Taser charge, it follows that he cannot have fired the Taser to defend himself or others.
70. Rather, we believe he did so to force Mr X into complying with instructions, to make the cell extraction easier. This is the only logical conclusion given the absence of serious and imminent threat.

Question 3: Was the use of the Taser reasonable in the circumstances as Officer A believed them to be?

71. In light of our conclusions that Officer A did not perceive a serious and imminent threat prior to using the Taser on each occasion, or act to defend himself or others, there is no need to assess whether the force he used was reasonable. Officer A cannot use self-defence to justify his uses of force under the conditions we have found.
72. Officer A's actions amount to excessive force and were gratuitous and unacceptable. Frankly, the TaserCam footage is disturbing to watch.

Overall, did Officer A's actions contribute to the situation he found himself in?

73. The situation should never have reached the point where a Taser was used.
74. By walking into the cell with the Taser presented at Mr X, Officer A immediately raised Mr X's level of apprehension, and decreased the likelihood of him being persuaded to cooperate.
75. Officer A's stated concerns for his three Corrections officer colleagues had an unreasonable influence on his tactical decision making and should not have prevented him from relying on them to restrain Mr X and carry him out of the cell if necessary. They were passed as fit for work, which presumably included the ability to physically manage prisoners.
76. If Officer A believed that the Corrections officers could not safely manhandle Mr X, who had stated that he was not going to cooperate, he should not have attempted the cell extraction at all and organised other officers to help. Officer A told the Authority that there was no other help available. The Authority does not accept that Officer A was unable to ring Tauranga Police Station and obtain help, if the only apparent alternative was using a Taser.

FINDING ON ISSUE 2

Officer A was not justified in firing his Taser on any of the three occasions because he did not genuinely perceive a serious and imminent threat at the time and did not act to defend himself. He used the Taser to induce compliance and by doing so used excessive force.

ISSUE 3: DID POLICE CORRECTLY CARRY OUT POST-INCIDENT PROCEDURES?

77. When an officer uses a Taser, he or she must notify a supervisor *"as soon as practicable."* The supervisor must ensure that:
 - 1) the person tasered has been examined by a doctor, and the examination recorded;
 - 2) the scene is preserved and photographed if necessary, for further investigation;
 - 3) evidence created when the Taser was used, such as wires, probes, and cartridge identification tags, are collected and exhibited; and

- 4) the officer who used the Taser has completed the required records, including a Tactical Options Report and associated electronic information uploaded from the Taser.
78. We are satisfied that Mr X received sufficient medical care. After being taken to Tauranga Police Station, he was quickly taken to a doctor, examined and a probe removed. He was deemed fit to return to custody at Tauranga Police Station. The examination was properly recorded.
79. The handling of the exhibits and scene seems less thorough. Officer A collected Taser wires and other items from the floor of the cell, bagged them and took them with him to Tauranga Police Station with Mr X. It was at this point that he told two sergeants about the incident. However, the scene had already been disturbed and therefore could not be properly examined.
80. Officer A said he told the sergeants they should go over to check the scene, but this didn't happen. He was told to go back to the court as staff were short, and he didn't have time to fill out the evidence documentation. He left the bag and uncompleted document on the sergeants' desk. It appears that these were never properly recorded and were eventually thrown away.
81. Officer A did complete the required Tactical Options Report, but was delayed in doing so as he needed to complete an online course before he was authorised to upload the Taser evidence. A senior officer gave him permission to submit his report outside the normal extended timeframe, due to these technical issues.
82. The post-incident procedures were not well managed. This was a serious incident, and Officer A should have left the evidence in the cell until after he had informed a supervisor. The sergeants should have ensured that the evidence collected was properly processed and stored.
83. We are satisfied that Officer A completed his Tactical Options Report as soon as he was able to do so and obtained the appropriate permission for completing it late.

FINDINGS ON ISSUE 3

Mr X received adequate and timely medical care.

Police did not adequately follow post-incident procedures.

Subsequent Action

84. In September 2020, Police updated policy to clarify that staff must remove Tasers when entering custodial areas. Policy now states:

“Except where expressly necessary, Tasers must not be routinely carried in custodial areas (including court cells). Staff entering custodial areas are to remove and secure Tasers before doing so.

Tasers should be available in custodial areas should they be needed in response to a particular detainee.”

A handwritten signature in black ink, appearing to read 'C. Doherty'.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

21 March 2023

IPCA: 18-2007

Appendix – Laws and Policies

Law

85. Section 48 of the Crimes 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.”*
86. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

‘Use of Force’ policy

87. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
88. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
89. 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).
90. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely de-escalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.
91. 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.

92. 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.

Taser policy

93. A Taser may be shown (presented) as a deterrent. 'Presentation' of a Taser means to draw the device (from its holster) and present it at a subject as a visual deterrent.
94. The operator may present the Taser in situations below the assaultive range on occasions where their perceived cumulative assessment (PCA) is that it is necessary because the situation has the potential to escalate to within or beyond the assaultive range. Assaultive behaviour is defined as *"actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm"*.
95. To encourage de-escalation and to warn others nearby, officers should give a verbal warning in conjunction with the deployment of a Taser unless it is impractical or unsafe to do so. The warning relevant to the presentation of a Taser is *"Taser"*.
96. A Taser may only be used (discharged) if the operator officer believes a person poses an imminent risk of physical injury to any person.
97. A 'discharge' is an *"application by firing two probes over a distance from a cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning"*.
98. The warning relevant to a discharge or contact stun is *"Taser, Taser, Taser"*.
99. Tasers should not be routinely carried in custodial areas, including court cells. Staff entering custodial areas should remove and secure the Taser beforehand. However, Tasers should be available in custodial areas should they be needed in response to a particular detainee.
100. Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is reasonably practicable.
101. When a Taser is used, the operator must notify a supervisor as soon as practicable. The supervisor must ensure that relevant evidence from the scene is collected and post-incident reporting is completed within required timeframes.

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.

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. 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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