

*Independence*

*trustworthiness*

*accountability*

*vigilance*

*integrity*

**Report on the Shooting of  
Steven Wallace**

March 2009



**IPCA**  
Independent Police Conduct Authority  
Whaia te pono, kia puawai ko te tika



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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At 4.03am on 30 April 2000, in the main street of Waitara, Taranaki, Senior Constable Keith Abbott, acting in the execution of his duty, shot and fatally wounded 23-year-old Steven James Wallace.
2. The incident was reported by the Commissioner of Police to the (then) Police Complaints Authority, as required under section 13 of the Police Complaints Authority Act 1988 (the Act). A Police investigator was assigned to carry out an investigation on the Authority's behalf. The Police commenced a separate homicide investigation.
3. At the time, the Authority made a commitment not to issue any public report until a Coroner's inquest had been conducted and the findings had been released.
4. Since 2000, the matter has endured a lengthy and varied history. A significant part of that history was the determination of whether any criminal liability should attach to Constable Abbott's actions. This became the subject of due process in the Courts and the result was his acquittal of murder in a private prosecution brought by the Wallace family.
5. In late 2007, the Coroner delivered his verdict into Steven's death and, following a request from the Wallace family, the (now) Independent Police Conduct Authority recommenced its independent investigation under section 12(1)(c) of the Act.
6. During its investigation, the Authority interviewed more than 50 people, including Police officers, civilian witnesses, and expert witnesses. The Authority's investigators also examined the Police criminal investigation files, the transcripts of evidence from the depositions hearing and the trial of Senior Constable Abbott, and the Coroner's findings.

7. This report sets out the Authority's findings in relation to the shooting and also addresses relevant Police policies and procedures. It makes a number of recommendations in relation to those.



# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## SUMMARY OF EVENTS

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### Steven Wallace's actions

8. In the early hours of Sunday 30 April 2000, Steven Wallace returned home from an evening of drinking and socialising at a local night club.
9. Between 3am and 3.40am, neighbours of the Wallace family reported hearing the sounds of yelling and of squealing car tyres, and of seeing members of the immediate family standing outside the family home. Steven then left the home in a highly agitated state, although the reason for that has never been disclosed.
10. Steven was next seen driving at speeds in excess of 100kph in a 50kph area before braking violently outside the Waitara Fire Station, causing the front left tyre of his vehicle to explode.
11. He was seen to get out of his vehicle at the Fire Station where he smashed a total of 23 glass panes in the station, before driving off again in his vehicle on the deflated left front tyre.
12. Steven then went to the Waitara New World Supermarket building, where he smashed 26 glass panes with a golf club or clubs. He then drove off again, still on the deflated tyre, along Queen Street. He travelled on the wrong side of a concrete traffic median and turned into McLean Street, the main street of the Waitara township, narrowly avoiding a collision with a taxi as he did so.
13. Steven then stopped on the corner of McLean Street and Domett Street, where he got out of his vehicle and began to smash glass panes in the surrounding buildings. As the taxi passed, after having dropped off its passenger, he crossed the road swinging a baseball bat and smashed the driver's window as it drove past, giving the taxi driver the impression that he

was aiming for the windscreen. The driver went into a petrol station to phone the Police.

14. On two occasions, Steven also moved aggressively towards a car containing some young people who knew him. The driver left in a hurry each time.
15. At some stage, Steven also drove at high speed directly towards a security guard on a bicycle. The guard feared for his life and went immediately to the petrol station to report the incident.

### The Police response

16. At 3.46am, in response to a 111 call from a member of the public about the smashing of windows at the Waitara Police Station, the Police Communications Centre (Comms) despatched two on-duty officers, Constable Jason Dombroski and Constable Jillian Herbert, from New Plymouth to Waitara, a distance of approximately 15km.
17. While he was waiting to be picked up by Constable Herbert, Constable Dombroski, the more experienced of the two officers, requested that Comms recall Senior Constable Abbott, who was off duty, from his home near the Waitara Police Station.
18. Constables Dombroski and Herbert were working under the supervision of Sergeant Fiona Prestidge, who was the night shift supervisor in New Plymouth that night. At the time the two constables were despatched, Sergeant Prestidge was out in an incident car. She initially advised Comms that she would go to Waitara to provide backup for the two constables, but then diverted to a fight at a service station, where she found that someone had been "*bottled*" in the head. She called for another patrol car to attend the fight, then continued on to Waitara, leaving New Plymouth at about 3.58am.
19. Constables Dombroski and Herbert arrived in the Waitara business centre at 3.57am. Having been called out, Senior Constable Abbott drove in his private vehicle and in plain clothes to the Waitara Police Station. There, he saw that all the windows had been smashed. He then drove to the intersection of McLean and Domett Streets. Whilst there he saw Steven Wallace drive up and stop outside a pharmacy, about 30 to 40 metres away. Steven got out and began smashing all of the pharmacy windows using a long metal object.
20. Constables Dombroski and Herbert also arrived in McLean Street at this time. As they drove slowly towards the pharmacy, Steven emerged from around the rear of his vehicle with a golf club and strode towards the Police car.

21. Raising the club in both hands, he used it to smash the windscreen directly in front of Constable Herbert's face. As she attempted to reverse away, Steven pulled the head of the golf club out of the broken windscreen and launched a second attack on the Police car, this time smashing a side window. Senior Constable Abbott witnessed this attack, though he was not sure what type of weapon Steven was using.
22. Constables Dombroski and Herbert drove to the Waitara Police Station about 80 metres away and Constable Dombroski gave Comms a situation report, requesting that Senior Constable Abbott be instructed to obtain a firearm as he believed, on good grounds, that Steven Wallace was out of control and could not safely be approached close enough to use oleoresin capsicum (OC) spray.
23. Sergeant Prestidge was aware, through listening to the radio as she was travelling to Waitara, that the patrol car had been attacked and that a request for firearms had been made. She later stated that it was clear from what Constable Dombroski said, and from his tone of voice, that there were "*urgent and serious safety concerns*". She did not give any directions or authorise the use of firearms, believing that there was such immediacy and danger that radio communications should be kept clear for Constable Dombroski to communicate with Comms. She continued to monitor radio traffic as she travelled to Waitara.
24. At 3.59am, Comms called out the sole Police dog handler who was on call in New Plymouth. The handler was off duty at the time.
25. In the meantime, Steven Wallace got back into his car and drove to a decorating shop further down McLean Street, where he proceeded to smash the windows of that and other shops using a golf club and baseball bat. Constable Herbert kept him under observation, while Constable Dombroski went into the Police Station to uplift a firearm.
26. Senior Constable Abbott formed the view that he needed to get a firearm as Steven was "*an obvious threat*" to Police officers, including himself. He went back to the police station and found Constable Dombroski already there.
27. At this point, Senior Constable Abbott mistakenly believed the person he had observed was a man he knew as David Toa, who lived a short distance from him. Senior Constable Abbott believed he had a rapport with David Toa and had no reason, prior to that night, to believe that he was dangerous. Later analysis established that there were a number of physical similarities between



David Toa and Steven Wallace. Steven Wallace was not known to Constable Abbott.

28. Constable Dombroski and Senior Constable Abbott each armed themselves with Glock standard issue 9mm pistols, spare magazines of ammunition, and standard issue holsters. Neither signed the Firearms Register or confirmed to Comms that they were arming themselves.
29. Senior Constable Abbott also uplifted a duty belt which included an OC spray canister. He was already in possession of his own side-handled PR24 long baton. Neither officer put on helmets or body armour. Constable Dombroski had left his PR24 baton in the car in which he and Constable Herbert had travelled from New Plymouth.
30. Although they discussed Steven's behaviour whilst arming themselves, it is clear that Constable Dombroski and Senior Constable Abbott did not formulate any specific plan or strategy for dealing with him before they left the station in a marked Police vehicle with Constable Dombroski driving. Senior Constable Abbott did not realise at this stage (and until after the shooting) that Constable Herbert was also present. He believed that he and Constable Dombroski were the only Police officers present at the time.
31. By this stage Constable Herbert had driven to the pharmacy where she kept Steven under observation. Constable Dombroski and Senior Constable Abbott drove past her vehicle and located Steven and his car on the corner of Grey and McLean Streets.
32. Constable Dombroski parked their vehicle approximately 30 metres away and he and Senior Constable Abbott walked to the middle of the intersection. They could see that Steven was holding a steel-shafted golf club in one hand and an aluminium baseball bat in the other.
33. Constable Dombroski immediately removed his pistol from its holster, trained it on Steven and ordered him to put down his weapons. This command was repeated several times but ignored by Steven.
34. Senior Constable Abbott kept his pistol holstered while Steven advanced quickly on Constable Dombroski, yelling and swearing at him. The two officers and Steven were about 20 metres apart and the officers maintained this distance by taking backward steps.
35. Senior Constable Abbott, still believing Steven Wallace to be David Toa, began to repeatedly appeal to him by name to drop his weapons and talk. Steven responded by hurling the golf club at Senior Constable Abbott. The

club was thrown with considerable force and spun directly at the Senior Constable, who was forced to take evasive action. At this point he drew his pistol.

### The shooting

36. Steven continued to advance on Senior Constable Abbott, still with the baseball bat in his hand. In a statement made to the Police about four hours after the shooting, the Senior Constable said that Steven was holding the bat *"in front of his body with both hands. The bat was over his shoulder similar to an axe-grip. I took this to be an aggressive posture."*
37. The Senior Constable continued to walk quickly backwards, retreating from Steven and repeatedly warning him that he was armed. Steven, however, lengthened his stride and advanced on the Senior Constable at a faster rate than the officer was retreating.
38. Senior Constable Abbott, still believing he was dealing with David Toa, responded by firing one warning shot into the air at a 45 degree angle.
39. However, despite the warning shot, Steven Wallace continued to advance, whilst uttering threats to kill Senior Constable Abbott. The Senior Constable, who by this point had retreated to the footpath with shops close behind, warned him that if he came any closer he would shoot him.
40. The relevant passage from the Senior Constable's statement follows:

*"I fired the [warning] shot into the air, while continuing to go backwards. I had almost gone right back to the footpath on the opposite side of the road, near the sports shop. The offender at this stage was closer to me than he had been before and I would estimate that distance at 10 metres approx.*

*At this stage he was directly in front of me, with my back to the shops. Jason [Constable Dombroski] was on my right hand side, about 20 metres further up Mclean Street. At this stage I felt my exit was being closed. The offender was advancing more quickly and closing the gap significantly.*

*I genuinely feared for my life. He was continuing to say he was going to do something to me with the weapon that he was holding. He still held the baseball bat above his head in a threatening manner and his words were to the effect he intended me harm. He was continuing to advance towards me...*

*I never stopped retreating. My pace of retreat was constant but the gap was getting smaller.*

*I then fired three shots. I shot instinctively at the offender. It was dark, there were just three shots in his general direction. They were three shots in rapid succession...*

*The offender fell to the ground slowly, he tried to get up and flopped back down on the ground, several times."*

41. Constable Dombroski's evidence was that, after the warning shot had been fired, Steven Wallace appeared even more determined to get to Senior Constable Abbott, saying "You fucking arsehole, I'm going to kill you". Constable Dombroski said he did not fire any shots himself. However, believing that Steven intended to kill Senior Constable Abbott, he was preparing to shoot when Senior Constable Abbott fired at Steven. He stated in evidence:

*"...one of us was going to have to shoot him. ...if Constable A [Senior Constable Abbott] did not shoot him, then I was going to. I was positive that had he reached Constable A he would have no hesitation in hitting him with the bat with the intention of killing him.*

*I was also positive that had he [Wallace] reached and killed Constable A, then he would have come after me next."*

42. Ballistics testing later confirmed that Senior Constable Abbott in fact fired four shots at Steven Wallace, not three as he had believed.

### **People in the vicinity**

43. A number of people were in the vicinity at the time. One man had gone out in his car after hearing windows being broken and had stopped near the intersection of Grey and McLean Streets. A taxi-van dropped passengers near the same intersection, and a couple came out of their house at the same intersection but ran back in when they saw weapons. A man was driving to work on McLean Street. A group of young people in a car pulled up at the intersection after both Constable Dombroski and Senior Constable Abbott had drawn their firearms. They were shouted at by the Police to leave, and did so, about 30 or 40 seconds before the shooting. There were also people in nearby buildings.
44. Eyewitnesses agreed that Steven did not drop his bat or golf club in response to appeals from the Police. There were differing views about whether he was holding the bat up to his shoulder or had it at his side. The witnesses

confirmed that Steven walked towards the Police officers, who retreated, and that Steven was closing the distance between himself and the officers. They heard loud shouting from the Police officers. One witness described Steven's manner as *"threatening"*.

45. Some witnesses heard three shots being fired, some four.
46. One who saw the shooting said Steven was about three or four metres from Senior Constable Abbott at the time the shots were fired. This witness described Steven's manner as aggressive throughout, and said he believed Steven intended to hit Senior Constable Abbott. This witness and another said that Steven did not fall after the first two shots.

### Events immediately after the shooting

47. Steven Wallace was shot at 4.03am. Constable Herbert immediately called for an ambulance.
48. At 4.05am, as soon as it was considered safe, Constable Dombroski approached and placed his hand on Steven and advised him to remain still, telling him that an ambulance was on the way.
49. From his observations of Steven at the time, Constable Dombroski believed there was very little first aid that could be administered to him.
50. At 4.07am, four minutes after the shooting, Sergeant Prestidge arrived. She immediately confirmed that an ambulance was on its way and that Constable Dombroski believed there was little that could be done for Steven. She requested that additional staff be called out.
51. Sergeant Prestidge made a visual-only preliminary first aid assessment. She noted that there was minimal bleeding and decided that compression bandages were not required. She noted that Steven Wallace was breathing and had movement, but she did not speak to him.
52. A witness offered a blanket to Constable Dombroski to place over Steven. According to the witness, this was initially refused but then accepted. At 4.12am Constable Dombroski placed the blanket over Steven. Shortly afterwards Sergeant Prestidge approached Steven again. She examined his front and noted minimal bleeding. She lifted his clothing and examined his back which showed a bloodied area but no signs of extensive bleeding.
53. At 4.13am Sergeant Prestidge applied a sling bandage obtained from the first aid kit in her Police vehicle. This was folded and placed around Steven under his clothing before he was re-positioned on his back.

54. Steven was still breathing but his condition appeared to be deteriorating. Sergeant Prestidge remained with him from 4.14am until 4.20am, when the ambulance arrived. She then assisted the ambulance crew with on-site treatment and preparing Steven for transport to Taranaki Base Hospital.
55. The dog handler, who had been preparing to leave his address at the time Steven Wallace was shot, was stood down immediately after the shooting.
56. The scene of the shooting was cordoned off and later examined in the course of the Police homicide investigation.
57. A Police constable travelled with Steven in the ambulance to Taranaki Base Hospital, where the constable was relieved by another Police officer.
58. Steven died in the operating theatre at 9.10am that day.

#### Cause of death

59. Steven Wallace was hit by four bullets. The attending surgeon, Mr Michael Fancourt, confirmed that Steven died due to a significant wound to his liver which caused extensive bleeding and which could not be sufficiently controlled under surgery.
60. Both Mr Fancourt and the pathologist Dr Hunt confirmed that even if first aid had been rendered immediately after Steven was shot, he would not have survived.

#### POLICE RESOURCES

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61. In April 2000, Police had an acting sergeant (permanently appointed in 2002) as the Officer in Charge of the Waitara Police Station with responsibility for four small outlying stations and a total of 17 General Duties Branch and Criminal Investigation Branch (CIB) staff.
62. The Waitara Police Station closed at 11pm every night including Friday and Saturday nights. In 2003, weekend closing was extended to 2am due to an increase in youth crime.
63. At any one time during the year 2000, two Police officers were scheduled to work out of the station but on most occasions only one officer would actually be working due to annual leave and other commitments.
64. The nearest available back-up for Waitara Police was New Plymouth, approximately 18 minutes away at normal speed, seven to eight minutes in an emergency situation.

65. Against this background and the fact that the events surrounding Steven Wallace occurred in the early hours of the morning when the Waitara Police Station was closed, the Police response was initially provided by the on-duty New Plymouth Police officers together with recalled-to-duty Waitara Senior Constable Keith Abbott.

#### POLICE PROFILES

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66. Senior Constable Abbott, who is of Ngati Kahungunu and European descent, was 45 years of age in April 2000. He joined the New Zealand Police in April 1985, having previously served at New Plymouth for nine years with the Ministry of Transport on car and motorcycle patrols.
67. As a Police officer, he commenced duty in New Plymouth in July 1985 and worked at Bell Block as a Community Constable and later with the Traffic Safety Branch in New Plymouth before transferring to Waitara as a General Duties officer in September 1995.
68. Senior Constable Abbott was a member of the Armed Offenders Squad (AOS) from December 1986 and attended numerous callouts involving armed offenders. In 1991, along with other AOS staff, he was shot at during an attempted aggravated robbery by an armed gang at the TSB Bank in Moturoa near New Plymouth.
69. During his service with the AOS, Senior Constable Abbott demonstrated high levels of competency with firearms. He attended numerous AOS District Training Camps, including one on 27 and 28 April 2000 during which he achieved the maximum possible score with both pistol and rifle. He represented the New Zealand Police Rifle Team and competed in a number of national shooting events for Police.
70. Constable Dombroski was 31 years of age in April 2000 and had joined the New Zealand Police April 1995. He commenced duty in New Plymouth in September 1995 as a General Duties Constable and in April 1998 transferred to Waitara where he remained until the beginning of April 2000 when he returned to New Plymouth.
71. At the time of the shooting in April 2000, Constable Dombroski was fully qualified and held a current certificate for the Glock pistol.
72. Constable Herbert was 37 years of age in April 2000 and had joined the New Zealand Police in June 1998. She commenced duty in New Plymouth in December 1999 as a General Duties Constable and at the time of the shooting

in Waitara was fully qualified and held a current certificate for the Glock pistol.

#### STEVEN JAMES WALLACE

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73. Steven Wallace was born in New Plymouth on 2 October 1976. His whakapapa is Te Atiawa. At the time of his death he was living in the family home in Waitara.
74. He was educated in Waitara and in 1996 commenced study towards a Māori Design Course at Massey University, Palmerston North. In 1997 Steven enrolled at the School of Architecture at Victoria University and, over the next three years, completed a number of papers towards a Bachelor of Science degree specialising in Architectural Design.
75. Because of statements to the media made by the Wallace family, it is relevant and appropriate to note that Steven Wallace had a history of violence to persons and property, which had brought him to Police notice on a number of occasions between April 1995 and April 2000.
76. In 1995 he received diversion after driving his mother's vehicle through the front fence of a Waitara property following a heated argument with his girlfriend.
77. Later that year, he became involved in a fight during a 21<sup>st</sup> birthday function and assaulted a female before fleeing. He returned later with a piece of wood and smashed the windows of vehicles at the function. The owner of one vehicle, who was sitting inside it when Steven smashed a window, confronted Steven, who struck him across the back causing extensive bruising. When the Police interviewed Steven Wallace over this matter, he threatened a constable, first with a broom and later with a shovel, before running away. He was convicted of intentional damage and assault with a weapon.
78. During 1998, Steven was convicted three times for fighting in a public place. Those fights took place in the early hours of the morning while he was intoxicated.
79. Steven also had convictions for cultivation of cannabis, and for driving offences including excess breath alcohol and failing to stop.
80. Police records also reveal a number of call-outs to the Wallace family home arising from domestic arguments, several of which involved Steven Wallace.

## THE POLICE INVESTIGATION

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81. Police commenced a homicide investigation the same day Steven Wallace was shot. Named Operation McLean, it was initially under the command of Acting Detective Senior Sergeant Grant Coward, Officer in Charge, New Plymouth CIB. From 2 May 2000, Detective Inspector Brian Pearce, from Christchurch, assumed command of the Operation.
82. Throughout the investigation Detective Inspector Pearce reported directly to the District Commander, Central Police District, Superintendent Mark Lammas and to the Acting Deputy Commissioner: Operations at Police National Headquarters.
83. The focus of the investigation was on the actions of Senior Constable Abbott and whether there was *prima facie* evidence of criminal liability arising from his actions.
84. At the conclusion of the investigation, Detective Inspector Pearce provided a 185-page report to the District Commander, which recommended that no criminal charges be laid.
85. This report was reviewed by both the Crown Solicitor in Wellington and the Deputy Solicitor General, both of whom agreed with Detective Inspector Pearce's findings.

## THE PRIVATE PROSECUTION

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86. Following the Police decision not to prosecute, Steven Wallace's father, James Wallace, swore an information charging Senior Constable Abbott with murder.
87. At a depositions hearing in January and February 2002, two Justices of the Peace found there was no case for Senior Constable Abbott to answer and he was therefore not committed for trial.
88. Mr Wallace then applied under Section 345(3) of the Crimes Act 1961 for the written consent of a Judge of the High Court to present an indictment in respect of the offence alleged against Senior Constable Abbott.
89. The application was heard by the Chief Justice in June 2002 and was granted. A consequential order was made consenting to the filing of an indictment in the High Court charging Senior Constable Abbott with the murder of Steven Wallace on 30 April 2000.



90. The trial took place before Justice Chambers and a jury in the Wellington High Court from 18 November to 3 December 2002. The issue at trial was whether the prosecution could exclude beyond reasonable doubt the possibility that Senior Constable Abbott had acted in self-defence when he shot Steven Wallace. During the trial, evidence of an expert nature relating to Police policy, practice and procedure in armed offender situations was given by witnesses for both the prosecution and defence. At the conclusion of the trial Senior Constable Abbott was acquitted by the jury.

#### CORONER'S INQUEST

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91. Shortly after Steven Wallace's death, an inquest was opened in the Coroner's Court at New Plymouth under the Coroners Act 1988. The Coroner then adjourned the inquest until the conclusion of the trial of the private prosecution.
92. On 8 July 2003, the Coroner decided to resume the inquest for the following limited purposes:
- i) to examine Police policy and procedure as it applies to general Police staff (excluding the AOS) in dealing with violent offenders in circumstances such as those which applied in the case of Steven Wallace;
  - ii) to examine the provision of first aid care, including the actual care provided to Steven Wallace.
93. The Coroner also ruled it unnecessary to hear oral evidence from any of the witnesses who had given evidence in the criminal trial. Rather, he would receive the transcript of evidence and exhibits from the trial under section 26(5) of the Coroners Act 1988.
94. The Wallace family was directed to provide a list of witnesses they intended to call at the resumed inquest together with briefs of evidence, if available. On 10 September 2004 the Coroner declined a request by counsel for Senior Constable Abbott to review his decision to resume the inquest.
95. The resumed inquest took place in New Plymouth in September 2005 and was attended by representatives of the Police Complaints Authority.

### Coroner's findings

96. On 3 August 2007, the Coroner released his findings, namely that Steven Wallace died as the result of the gunshot wounds he received when shot by armed Police at Waitara on 30 April 2000.
97. The Coroner noted that Senior Constable Abbott was not aware that a dog handler had been called out, and recommended that the Police review the Police Dog Deployment Guidelines with a view to providing guidance to General Duties staff as to when to call out a dog team to assist in the execution of their duties.
98. The Coroner also referred to the requirements of Regulation 5 of the Police Regulations 1992 dealing with key aspects of supervision and command, and compared these with the actions of Sergeant Prestidge, Constable Dombroski and Senior Constable Abbott. He concluded that, individually and collectively, all three officers had demonstrated poor decision-making and a lack of leadership in the handling of this incident, but declined to make any recommendations as this was a matter of performance and not an issue of adequacy of policy or procedure.

### Police response to the Coroner's findings

99. On 3 August 2007, in a media statement, the Police Commissioner dismissed the Coroner's criticism and commended the three officers for their professionalism and dedication.
100. On 27 August 2007 the Officer in Charge of Operation McLean, (now retired) Detective Inspector Pearce, tabled a lengthy report in response to the Coroner's criticisms of the three officers. Mr Pearce concluded that the lack of leadership as found by the Coroner could not be regarded as a contributory factor to the death of Steven Wallace.



# The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

## POLICE COMPLAINTS AUTHORITY INVESTIGATION

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101. Under section 13 of the Police Complaints Authority Act 1988, the Police are required to notify the Authority of any incident in which an officer, acting in the execution of his or her duty, causes or appears to have caused death or serious bodily harm. In accordance with this section, the Police notified the Authority of the shooting.
102. The Authority did not have its own investigators in 2000 and at that time was reliant on Police resources to carry out investigations. Detective Inspector Brew, the Central Police District Crime Services Manager based in Palmerston North, was assigned the responsibility of conducting an investigation on the Authority's behalf.
103. In addition, on 1 May 2000 the then Deputy Authority, Judge Ian Borrin, travelled to Waitara to visit the scene, receive a briefing from Police, and visit the Wallace family. The Authority and Deputy Authority also travelled to Waitara later that month for a further Police briefing.
104. This Authority's investigation was separate from the Police investigation referred to in paragraphs 81 to 85. The Authority's investigation focused on Police policy, practice, and procedure, as distinct from issues of criminal liability which were central to the Police investigation.
105. Detective Inspector Brew completed his investigation on behalf of the Authority in August 2000 and reported to the Authority.
106. However, the Police Complaints Authority had made a public commitment to wait until the conclusion of any Coronial hearing before reporting, and so did not prepare its report at that time.

INDEPENDENT POLICE CONDUCT AUTHORITY INVESTIGATION

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107. After the Coroner reported in September 2007, the Wallace family contacted the (now) Independent Police Conduct Authority advising that there were issues they wished to have investigated and addressed before the Authority reported. Authority Chair Justice Lowell Goddard and investigators met the family. The issues they raised are addressed in paragraphs 196 to 228.
108. Justice Goddard then notified the Commissioner of Police on 11 February 2008 of her intention to independently conduct a number of further enquiries pursuant to section 12(1)(c) of the Independent Police Conduct Authority Act 1988 before reporting.
109. In particular, the Commissioner was notified of the Authority's intention to interview a number of serving and retired members of Police involved directly or indirectly in the case, as well as a number of civilian witnesses.
110. The Authority's investigation considered the Police actions in Waitara on 30 April 2000 benchmarked against the New Zealand Police Manual of Best Practice, all relevant Police General Instructions, the relevant provisions of the Crimes Act 1961, and the local District Orders. The Authority also considered the efficacy and integrity of the subsequent Police criminal investigation (Operation McLean), as benchmarked against the Police Manual of Best Practice.
111. In the course of its investigation, the Authority considered the evidence given during the trial of Senior Constable Abbott, and at the Coroner's inquest. The Authority also considered the Coroner's findings. The Authority's investigators interviewed more than 50 people, including: the Police officers either directly involved in the incident or involved in the subsequent Police investigation; civilian witnesses from Waitara; and expert witnesses.



# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

## SCOPE OF THE AUTHORITY'S FINDINGS

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112. It is important to record the scope of the Authority's findings about certain matters. The cause of Steven Wallace's death is not an issue. As established at trial and found by the Coroner, Steven died as a result of gunshot wounds delivered by Senior Constable Abbott in firing a Glock pistol.
113. As also established, after a warning shot, Senior Constable Abbott fired a total of four shots at Steven, in two double taps. The fatal of those shots pierced Steven's liver and was not survivable. The Coroner made no specific finding as to which of the four shots was fatal, in light of differing expert opinion given on the topic at trial.
114. The question of the distance between the two men at the time the shots were fired and the order of those shots were key issues for the jury to determine in assessing the reasonableness of Senior Constable Abbott's response to Steven's aggression, it being argued by the prosecution that the firing of the third and fourth shots was reckless and entailed excessive use of force. As is clear from the verdict of acquittal, however, the jury did not find the Senior Constable's action in firing the four shots unreasonable, in the circumstances as he perceived them to be, and at the point he fired his pistol.
115. It is not open to the Authority to review the jury's verdict on those issues. Rather, the Authority's focus must be on the Police actions up to the 64 second period during which Constable Abbott was confronted by Steven Wallace and the shooting occurred (the timeframe in which the issue of self-defence had to be determined by the jury) and on the Police actions immediately after the shooting and on subsequent interaction between Police and the Wallace family.

116. The result of the Authority's investigation into those matters, after considering the applicable legal principles and relevant Police policies, practices and procedures are addressed under the following headings:

- Carriage and use of firearms;
- Tactical options other than use of firearms;
- Senior Constable Abbott's fitness for duty;
- Supervision and command;
- Police actions after the shooting;
- The Police homicide investigation (Operation McLean);
- Police conduct at Senior Constable Abbott's trial;
- Family concerns;
- Police policy and procedures.

#### CARRIAGE AND USE OF FIREARMS

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##### Applicable legal principles

117. The law relating to authorised use of force, including lethal force, is provided for in sections 39 and 62 of the Crimes Act 1961.
118. Section 39 provides that law enforcement officers may use reasonable force in the execution of their duties, such as when making arrests and in the enforcement of warrants. It further provides for officers to use *"such force as may be necessary to overcome any force used in resisting such execution or arrest"* if the execution or arrest cannot reasonably be carried out *"in a less violent manner"*.
119. Section 62 of the Crimes Act states that anyone authorised by law to use force will be held criminally responsible for any excessive use of force, according to the nature and quality of the act that constitutes the excess.
120. Section 48 of the Crimes Act provides lawful justification for the use of force by any person, whether or not authorised by law to use force: *"Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use."*

121. The above Crimes Act provisions are mirrored in the following Police General Instructions, which clarify and reinforce the requirements of the criminal law by circumscribing the circumstances in which Police may issue, carry and discharge firearms. Essentially, the use of firearms by Police is prohibited except in certain clearly specified situations; namely, where an officer believes on reasonable grounds that the carriage and use of firearms may be necessary to prevent death or grievous bodily harm.
122. General Instruction (GI) F061 prohibits the use of firearms by Police except:
- i) To defend themselves or others under section 48 of the Crimes Act 1961, or if they fear death or grievous bodily harm to themselves or others, and they cannot reasonably protect themselves or others in a less violent manner;
  - ii) To arrest an offender under section 39 of the Crimes Act 1961 if they believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting his arrest, *and* the arrest cannot be carried out in a less violent manner, *and* the arrest cannot be delayed without danger to others.
  - iii) To prevent the escape of an offender under section 40 of the Crimes Act 1961 if it is believed on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person (whether an identifiable individual or the public at large), *and* he takes flight to avoid arrest or escapes after arrest, *and* such flight or escape cannot reasonably be prevented in a less violent manner.
123. GI F060 (6) authorises the issue of firearms to members in any of the circumstances prescribed in General Instruction F061 above.
124. GI F066 authorises the deliberate discharging of a firearm in any of the circumstances in General Instruction F061.
125. GI F061(3) directs that an offender is not to be shot:
- “(a) until he or she has first been called upon to surrender, unless in the circumstances it is impracticable and unsafe to do so;*
- AND*
- (b) it is clear that he or she cannot be disarmed or arrested without first being shot;*
- AND*

*(c) in the circumstances further delay in apprehending him or her would be dangerous or impracticable.”*

126. Overlaying the criminal law and the General Instructions, the Police Manual of Best Practice reinforces that a shooting must be both necessary and justified in law *at the time* of the shooting. Staff are reminded that there is no legal justification for shooting a person when he or she is no longer a threat to life, irrespective of his or her previous actions. Staff are also reminded that Police officers may be criminally liable if the force used is excessive.
127. Officers are required to evaluate the prevailing circumstances before firing a shot. The onus of assessing the situation at the time of firing is on the Police officer pulling the trigger *unless* another officer giving the order can make the assessment at the time he or she orders the shot to be fired.

#### **Were the Police justified in arming themselves to respond to Steven Wallace's actions?**

128. The evidence clearly establishes that Steven Wallace engaged in a lengthy and violent rampage through the small town of Waitara in the early hours of Sunday 30 April 2000, using a baseball bat and a golf club to seriously damage numerous properties. Given the distance he covered, the timeframe involved and the number of separate properties he attacked, his rampage can only be described as a sustained course of irrational violence, borne of an unexplained rage, which showed no signs of abating. However, his violence that night was not limited to property damage and dangerous driving. It assumed a much higher level of dangerousness when it became directed towards human targets.
129. This escalation in seriousness seems to have manifested first when Steven crossed the road on foot to a taxi he had almost collided with, swinging his baseball bat and then proceeding to smash the driver's window, giving the taxi driver the impression that he was aiming for the windscreen. A further graphic manifestation occurred when he smashed the window of the patrol car, directly in front of Constable Herbert's face. Constable Dombroski was inside that patrol car when it was attacked in this manner, and Senior Constable Abbott witnessed the attack. These actions undoubtedly led the officers to believe, on reasonable grounds, that they were facing a situation which involved a very real risk of death or grievous bodily harm to some person, as described in GI F061, and that firearms therefore may be needed. At that point, it was their duty to prevent further violent offending by arresting Steven.



## FINDING

Both Senior Constable Abbott and Constable Dombroski had eye-witness evidence of Steven Wallace's extreme violence directed at persons as well as property. This can have left them in no doubt that they were dealing with an emergency situation, which required the uplifting of firearms from the Waitara Police Station in order to respond to a real threat of death or grievous bodily harm to themselves or to others in the vicinity. The officers were therefore justified in arming themselves.

The Authority also notes the Coroner's *"agreement that the decision to draw firearms was an appropriate decision in the circumstances"* and that counsel representing the Wallace family at the Inquest is recorded as not criticising the decision to draw firearms.

### Did Police follow proper procedures when issuing themselves with firearms?

130. General Instruction F059 states that Police firearms are not to be issued except on the authority of a commissioned officer or supervising non-commissioned officer, *unless* an emergency situation exists, and no commissioned officer or non-commissioned officer is available.
131. Certain particulars regarding the issue of firearms and ammunition must be recorded in the Firearms Register and each staff member is required to have a detailed knowledge of policy and the Crimes Act 1961 in relation to the use of firearms by Police.
132. In this case, an emergency situation had arisen and no supervising officer was available at the scene. Sergeant Prestidge had been advised that firearms were being issued and, based on Senior Constable Abbott's experience and the urgency of the situation, was comfortable with that decision.
133. Neither Constable Dombroski nor Senior Constable Abbott signed the Firearms Register at the time they armed themselves; rather, they made a retrospective entry after the weapons were returned to the station. Nor did they inform Comms that they were arming themselves, though Comms had clearly been informed of the intention to arm.

## FINDING

The officers' failure to complete the Firearms Register was a technical breach of the General Instruction, but an understandable one given the officers' entirely reasonable view that they faced an emergency situation.

### Was Senior Constable Abbott justified in firing a warning shot?

134. General Instruction F064 discourages the firing of warning shots. However, there may be circumstances, as outlined in General Instruction F061, where it is appropriate and necessary to fire a warning shot.
135. In such a case, extreme caution is to be observed. The General Instruction states that a warning shot should only be fired if: the offender has been called upon to surrender and has failed to do so; and the shot can be safely fired vertically into the air, in the open, and in such a manner that it is clear to the offender he is not being shot at, but is receiving a warning.
136. In this case, the Authority notes the evidence of an expert witness for the prosecution at Senior Constable Abbott's trial, who stated that in his opinion a warning shot had not been necessary in the circumstances, as Senior Constable Abbott's life was not under immediate threat at the moment it was fired.
137. However, the Authority also notes that Senior Constable Abbott fired this warning shot only after Steven Wallace had ignored repeated appeals to put down his weapon and was by that time advancing on and threatening to kill Senior Constable Abbott. In the circumstances, it was reasonable to assume that the firing of the warning shot may have had a salutary effect on the offender, thus avoiding a tragic outcome. Unfortunately, it did not as Steven was not deterred.

#### FINDING

Senior Constable Abbott complied with required policy, having repeatedly called upon Steven Wallace to surrender his weapons without success and by firing a shot directly into the air without placing anyone at risk.

By his actions Senior Constable Abbott made it clear to Steven Wallace that he was not being shot at, but was receiving a warning.

### Was the shooting justified in law?

138. Reference has already been made to the relevant Crimes Act provisions and to the operative General Instructions and to the fact that the issue of self-defence has been finally determined by due process in the courts.
139. Suffice to say, in this case the Police were responding to a person who they had already witnessed acting in a violent manner that could have caused death or serious injury to Constable Herbert and to the taxi driver.

140. The evidence establishes that, after arming themselves and returning to McLean Street, Senior Constable Abbott and Constable Dombroski repeatedly appealed to Steven Wallace to put down his weapons. Steven instead threw the golf club at Senior Constable Abbott, and advanced on him with the baseball bat in an aggressive manner, uttering threats to kill him.
141. The evidence further establishes that he continued to advance and to utter threats as Senior Constable Abbott backed away, and even after Senior Constable Abbott had fired the warning shot.
142. The jury accepted that at the critical time when Senior Constable Abbott fired his Glock, he genuinely feared for his life and for the life of Constable Dombroski, and had no less violent option immediately available to him to remove this threat.

#### FINDING

In accordance with the jury's verdict, Senior Constable Abbott was lawfully justified in shooting Steven Wallace in self-defence and in the defence of others, within the meaning of section 48 of the Crimes Act 1961.

It is appropriate to reinforce that Steven Wallace was shot, not because he had broken windows, or because he was resisting or escaping from arrest, but because Senior Constable Abbott had reasonable grounds to fear for his own life and for that of Constable Dombroski.

#### TACTICAL OPTIONS OTHER THAN USE OF FIREARMS

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##### What other tactical options were available and considered?

###### *Cordon and containment*

143. The Police Manual of Best Practice states that, when responding to an armed offender, Police should if possible cordon the area and take a *"wait and appeal"* approach. However, *"if the suspect is acting in a way that makes casualties likely, Police must act immediately to prevent this"*.
144. The Manual also states that it is better to take a matter too seriously than too lightly, that every effort must be made to prevent casualties, and that *"suspects who are believed to be armed are to be treated as dangerous and hostile until the contrary is definitely established"*.
145. In this case, as already noted, Senior Constable Abbott and Constable Dombroski were responding to a demonstrably violent and volatile person, armed with a steel-shafted golf club and a baseball bat. Steven Wallace had

already demonstrated extreme violence at close quarters towards another constable and towards the driver of another vehicle. There were other people in the vicinity who may also have been exposed to danger if the officers had not quickly intervened. The officers were faced with a rapidly evolving, mobile and very dangerous situation in the early hours of the morning in a small town, and with limited resources available to them. Furthermore, their attempts to contain Steven by standing back from him and making voice appeals were met with threats and an aggressive advance. In these rapidly unfolding circumstances, and as a direct result of Steven's own actions, cordon and containment was not viable.

### *Retreat*

146. Neither of the expert witnesses who gave evidence at Senior Constable Abbott's trial believed retreat was a viable option. Having engaged Steven Wallace and appealed for him to drop the golf club and baseball bat, Senior Constable Abbott and Constable Dombroski could not have retreated without exposing members of the public in the vicinity to danger from Steven Wallace's actions. For this reason, and for the reasons that cordon and containment of a moving offender was not viable, retreat was also not a viable option.

### *OC spray*

147. The effective range for use of OC spray is up to 3 to 5 metres in ideal circumstances.
148. The Police training manual dealing with the tactical deployment of OC spray states: *"Extreme caution should be exercised where the subject is armed with a blunt edged weapon, or knife, as the distance required to deploy the spray effectively could expose members to unnecessary risk."*
149. Elsewhere in the manual officers are reminded that in some circumstances exposure to OC spray may result in minimal, or at times no effect whatsoever, particularly on violent or goal-orientated attackers. At all times, officers are encouraged to be prepared to resort to other tactical options.
150. In this case, Senior Constable Abbott had chosen to carry OC spray, but was confronted with a 'goal set' attacker armed with a baseball bat. OC spray would have been of negligible use for self-defence or the defence of others in such circumstances.

### *Baton*

151. An adult-sized softball bat, similar to the one in Steven Wallace's possession at the time he was shot, measures 870mm in length and weighs 0.846kg.
152. The Police side handle PR24 baton measures 600mm in length and is primarily designed as a blocking tool in close quarter encounters.
153. An experienced Police trainer confirmed that an attacker such as Steven Wallace, armed with a baseball bat, has the ability to seriously injure an intended victim with a single strike, or fatally wound with a single strike to the head. It is also possible to inflict the same injuries by throwing a softball bat at the intended victim. The baton would therefore have been of limited use for self-defence or defence of others in the circumstances.

### *Police dogs*

154. As noted in paragraph 24, the one Police dog handler available was called out at 3.59am. As the handler was preparing to leave his address to travel to Waitara he was stood down as Steven had already been shot at 4.03am.
155. A second dog and handler were on rostered days off and out of the district at the time. Two further dog handler positions were vacant.

### FINDING

Given the limited nature of the available resources and the immediate threat presented by Steven Wallace, no option was available to the officers at the critical time other than use of force.

### **Did Senior Constable Abbott's mistaken belief about the identity of the person he was dealing with affect his handling of the situation?**

156. Senior Constable Abbott knew David Toa as a neighbour and as someone who had lived in Waitara for several years. As earlier noted, from the moment he arrived at McLean Street, Senior Constable Abbott believed he was dealing with David Toa.
157. The Authority sought expert opinion, and interviewed Senior Constable Abbott and David Toa, in an attempt to determine why the officer may have held this mistaken belief and whether it had any impact on the way he responded.
158. Though there were a number of physical similarities between Steven Wallace and David Toa, none of these enquiries produced any clear explanation for this apparent misunderstanding.

159. The Authority is satisfied that Senior Constable Abbott's belief regarding the identity of the person he was dealing with, although mistaken, was genuine and sincere. The effect it had was to engender a real belief in the officer that he might be able to calm the offender by personal appeal and verbal negotiation. Thus, his mistaken belief did not adversely affect the situation, but the contrary.
160. It was suggested at the hearing of the application under section 345(3) Crimes Act that, had the Senior Constable checked the registration of Steven Wallace's car when he first sighted it in McLean Street, he would have realised he was not dealing with David Toa, but that the person he saw smashing the pharmacy windows and the windscreen of the Police car was likely to be the registered owner, Steven Wallace, a man hitherto unknown to him. Had this occurred, given Steven's recorded history of violence, including towards Police, it is quite improbable that any other decision would have been taken by the officers than to arm themselves in order to try and deal with the situation, or that they would have been given any different orders.

**FINDING**

Senior Constable Abbott's mistaken belief that he was dealing with David Toa did not materially affect his handling of the situation.

**SENIOR CONSTABLE ABBOTT'S FITNESS FOR DUTY****Had Senior Constable Abbott consumed alcohol prior to the shooting?**

161. General Instruction F060 prohibits the consumption of alcohol within a reasonable time before commencing duty.
162. The Wallace family alleges that Senior Constable Abbott attended a wedding function at the Waitara Fire Station and/or a farewell function for two of his AOS colleagues at the New Plymouth Police Station on the evening before the shooting. Similar rumours to the effect that Senior Constable Abbott had consumed alcohol also circulated in Waitara in 2000.
163. The initial Police investigation made enquiries into these allegations. Further and more detailed enquiries were subsequently made by the Authority's investigators.
164. The evidence of both inquiries indicates that Senior Constable Abbott did not attend either function, and that these rumours have no foundation. Rather, the evidence establishes that Senior Constable Abbott worked his rostered

shift from 3pm to 11pm on Saturday 29 April 2000 and arrived home at about 11.15pm. After eating a meal and consuming a non-alcoholic drink he watched television and went to bed at about midnight. The next event was his urgent recall to duty at 3.48am on the morning of Sunday 30 April 2000.

165. Neither Senior Constable Abbott nor Constable Dombroski were breath and/or blood tested after the shooting. The issue of mandatory alcohol and drug testing of officers involved in 'critical incidents' such as shootings has been the subject of comment by the Authority and Coroners, and has been considered by Police. Police do not have a policy that requires testing following a critical incident, except breath testing when there is a vehicle crash involving the Police.
166. In the Authority's view, mandatory drug and alcohol testing following critical incidents would be of considerable benefit to Police and should be introduced. It would indicate a willingness on the part of Police to ensure accountability within its own ranks. And it would protect individual officers from false allegations that they were or may have been impaired by alcohol and/or drugs. The Authority's view is that Police should urgently develop policy and procedures for compulsory alcohol and drug testing (see recommendation ii, page 43). The Police accept this and have advised the Authority that the policy is under review, and that the review is well advanced.

#### FINDING

There is no evidence that Senior Constable Abbott had consumed alcohol prior to the shooting of Steven Wallace.

#### **Was Senior Constable Abbott suffering from post traumatic stress disorder at the time of the shooting?**

167. As noted in paragraph 68, Senior Constable Abbott had been shot at during an armed robbery in 1991. The Authority considered whether Senior Constable Abbott might have been suffering from post traumatic stress disorder (PTSD) or any other stress-related illness that might have affected his decision-making on 30 April 2000, and sought expert opinion on this point.
168. PTSD is an emotional illness that develops as a result of a frightening, life-threatening, or otherwise highly unsafe experience. PTSD sufferers re-experience the traumatic event or events in some way, tend to avoid things that remind them of the event, and can be sensitive to normal life experiences. PTSD can cause, among other reactions, hypervigilance to threat.

PTSD symptoms can develop weeks, months or sometimes even years following a catastrophic event.

169. Based on the opinion of an expert in PTSD who was consulted by the Authority, given the passage of time it is not possible to conclusively establish whether or not Senior Constable Abbott was suffering from any form of trauma, including post traumatic stress disorder, on 30 April 2000. However, there is no evidence to indicate that he was.
170. The Police Trauma Policy sets out the process by which officers involved in critical incidents may be referred to health professionals. This process, no doubt because of the need to consider the member's privacy, does not readily allow confirmation that the member has been approved to resume full Police duties. What appears to be missing is a definitive statement from an appropriate manager that the member does not pose a risk to him or herself, the public, or Police, and can safely resume duties with or without restrictions.
171. The policy is under review and the Police have advised the Authority that the review is well advanced. In the Authority's view such a review is timely and appropriate.

#### FINDING

There is no evidence that Senior Constable Abbott was suffering from post-traumatic stress disorder on 30 April 2000.

#### COMMAND AND CONTROL

##### **Was the Police response appropriate in terms of command and control?**

172. As noted in paragraphs 97 to 100, the Coroner found that Sergeant Prestidge, Senior Constable Abbott and Constable Dombroski had individually and collectively demonstrated poor decision-making and a lack of leadership in the handling of this incident. The Coroner stated that Sergeant Prestidge should have made enquiries of Constable Dombroski about whether firearms were needed and could have done more to guide the actions of the officers at the scene. The Coroner also commented on the fact that Senior Constable Abbott and Constable Dombroski did not make an explicit plan before confronting Steven, and suggested that Constable Dombroski did not defer to Senior Constable Abbott as the senior officer at the scene.
173. Senior Constable Abbott and Constable Dombroski should have briefly discussed control of the situation while they were at the Waitara Police



Station. Clearer communication may at least have acquainted Senior Constable Abbott with the fact that Constable Herbert was also in attendance. However, this reflects the reality that Constable Dombroski and Senior Constable Abbott were responding as quickly as they could to an immediate and serious threat.

174. As she travelled to Waitara, Sergeant Prestidge was clearly aware of the seriousness of the incident and of the capabilities of the officers involved. She was also aware that firearms were being drawn and was comfortable with that course of action under the circumstances. Any input she might have had before arriving at the scene could only have been general in nature, and to have interjected at that time would have distracted the members from their primary task. Clearly, if Sergeant Prestidge had not been happy with the members arming themselves, she was under an obligation to give appropriate directions; the fact that she did not is not grounds for criticism of her command and control of the situation. Indeed, she made a perfectly reasonable decision to rely on the officers at the scene, including an experienced member of the AOS, to respond appropriately to a dangerous offender.

#### FINDING

The lack of communication between Constable Dombroski and Senior Constable Abbott reflected the urgency of the situation they faced. In the Authority's view, Sergeant Prestidge's leadership was reasonable and appropriate under the circumstances.

#### POLICE ACTIONS AFTER THE SHOOTING

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##### **Was Steven Wallace given appropriate first aid and care after he was shot?**

175. At that time, AOS staff received training in the actions to be taken when someone was shot, including the application of first aid. General Duties staff did not receive such training; nor did the Police Manual of Best Practice make provision for post-shooting action to be taken by General Duties personnel.
176. The Police were criticised by the Wallace family and by one independent witness for failing to provide Steven Wallace with first aid and for refusing to allow anyone else to go to his aid while he lay on the street awaiting the arrival of an ambulance. This criticism is reflected in the Coroner's Report to a degree.

177. Though an ambulance was called immediately and Police did provide some care as explained in paragraphs 47 to 58, in the Authority's view more should have been done. In particular:
- A Police officer (Constable Dombroski or Constable Herbert) should have remained with Steven as soon as it was obvious he was no longer a threat until the arrival of the ambulance.
  - Police should have sought advice from ambulance staff while it was en route to the scene as to what, if any, first aid may have given in the circumstances.
  - The blanket offered by the witness should have been placed over Steven earlier.
178. However, as explained in paragraph 60, even if first aid had been provided immediately, this would not have saved Steven Wallace's life.

**FINDING**

Notwithstanding the traumatic effect of the incident on the officers concerned, more should have been done to show compassion and concern for Steven Wallace, once it was ascertained he was no longer a threat. However, even if first aid had been provided immediately, this would not have saved Steven Wallace's life.

**Did Police appropriately inform and liaise with Steven Wallace's family?**

179. Criticism was leveled at Police who attended the victim and family at Taranaki Base Hospital for not allowing family members to visit Steven, for not keeping the family informed, and for restricting access to him at the mortuary.
180. Steven was accompanied to Taranaki Base Hospital by a constable. Immediately after his identity had been confirmed, two officers visited the Wallace family at their home and informed them that Steven had been admitted to hospital. This visit took place at 6.25am. The delay in identification arose from the initial belief that Steven Wallace was in fact David Toa.
181. Soon after Steven was admitted to hospital, Inspector Knox arranged for a respected Māori kaumatua, the Reverend Albert Martin, known to Steven Wallace's father for 26 years, to be present. Thereafter, the Reverend Martin assisted in a continuous liaison role between Police and family members while

Steven underwent surgery, during the period his death was notified and when he was taken to the hospital mortuary.

#### FINDING

Although some time was taken to positively confirm Steven's identity, the proper process in terms of family liaison was followed as soon as it was confirmed.

### **Did Police ensure that cultural needs were met in relation to the scene of the shooting?**

182. After the shooting in McLean Street, Police asked the Fire Service to wash away Steven's blood. The street was subsequently opened to traffic without an opportunity being provided for a kaumatua to bless the area.
183. Police understand and accept that the area where Steven Wallace was shot and where his blood fell, was deemed by Māori to be tapu (a sacred area) and that a blessing and cleansing process should have been invoked in order to lift the tapu. The District Commander publicly apologised for the Police action in having the blood washed away without the site first being blessed.
184. As an outcome of this case, Te Atiawa kaumatua recommended that in future Police make early contact with local Māori Wardens to get advice on the appropriate protocols around tapu sites and to assist with family liaison matters. Both sides acknowledge, however, that the preservation of life at a scene will always remain the paramount consideration.
185. The Police have taken appropriate steps to ensure that staff are now alert to cultural requirements; for example all Police Districts have access to iwi liaison officers, each Police station is required to have a current list of key Māori and other significant cultural contacts for its area, and all communications centres have a Māori Responsiveness Plan.

### **Did Police make appropriate public statements via the media after the shooting?**

186. Police have faced strong criticism from both sides over their response to news media interest following the shooting of Steven Wallace.
187. On the one hand, the New Zealand Police Association, and Police staff, criticised the Police for failing to make early comment in support of Senior Constable Abbott and the other officers involved in the incident. In particular, Police were criticised for not answering reports in the media that Steven Wallace was "*shot for breaking windows*" rather than being shot in self-defence; and for not responding to comments in the media by the Prime

Minister, Helen Clark, that the shooting reflected racial tensions in Waitara. The Police have acknowledged that more frequent updates could have been provided to the media in the days after the shooting.

188. On the other hand, the Wallace family alleged that Superintendent Lammas prejudged the investigation by stating on television on 30 April 2000 that Senior Constable Abbott's actions were justified. The Authority has investigated this claim and has found that neither Superintendent Lammas nor any other Police officer made such a statement. Senior Constable Abbott's actions and the justification of them were not made public until completion of the Police criminal investigation and review by the Crown Solicitor and Deputy Solicitor-General.

#### FINDING

Police have recognised that their performance in terms of managing appropriate release of information to the public and news media could have been better in this case, and have taken steps to remedy the shortcomings apparent at Waitara.

## THE POLICE INVESTIGATION INTO THE SHOOTING

### Did Police appropriately investigate the shooting of Steven Wallace?

189. The Authority looked closely at the integrity and efficacy of the Police investigation.
190. The Police acted appropriately by introducing Detective Inspector Pearce, a senior CIB commissioned officer from outside Central District, to lead the investigation at the earliest opportunity. They also acted appropriately by ensuring that the investigation reported to the Central District Commander, Superintendent Lammas, and to the Acting Deputy Commissioner: Operations at Police National Headquarters. While most staff working on the investigation came from either New Plymouth or Central District and several knew Senior Constable Abbott to a greater or lesser extent, after interviewing the managers and key investigators involved, and taking into account Police resource issues at the time, the Authority is satisfied that the overall integrity of the investigation was properly maintained. The Authority looked carefully for any suggestion of bias towards a preconceived outcome and found none.
191. In most respects, the investigation was carried out in accordance with best practice. However, in some respects it fell short. For example, a mistake was made in recording the serial numbers of the pistols carried by Senior

Constable Abbott and Constable Dombroski, and no residue testing was carried out on either officer. The Police have acknowledged these issues.

192. While interviewing standards at times fell short of best practice, the overall factual basis and integrity of the investigation was not imperiled as a consequence.

#### FINDING

Operation McLean was well-led and, in most respects, met high standards of professionalism and integrity. Some aspects of the investigation did not meet best practice.

### Did Police deliberately intimidate jurors by wearing uniforms at Senior Constable Abbott's trial?

193. The Wallace family claimed that during the trial of Senior Constable Abbott a number of Police officers who were not witnesses sat in court in full uniform in an apparent show of solidarity for the accused as their colleague. The family complained to the Authority that this behaviour was not only intimidating to them but had the appearance of being designed and intended to influence the jury.
194. The Police policy on *Attendance at Courts* states: "*members of the Uniform Branch shall wear uniforms when attending a court on duty*". The policy is clearly intended to ensure that members required to attend court for the purposes of giving evidence or some other official duty should be properly attired in uniform.
195. The policy on *Improper Use of Uniform and Equipment* states that a uniform shall only be worn on duty and, if desired, when travelling to and from duty. Therefore, a Police officer attending court should only be in uniform if required to be in the building while on duty.

#### FINDING

There is no evidence that the Police officers concerned wore their uniforms to court in a deliberate attempt to influence the jurors or to intimidate the Wallace family.

However, the wearing of uniform to court when attending to support a colleague and while not on duty is a breach of the relevant policy. It also gives an impression of solidarity and thus risks creating the impression that the officers concerned hope to influence the jury.

FAMILY CONCERNS

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**Were the Wallace family concerns addressed?**

196. The Wallace family raised three issues with the initial Police Complaints Authority investigation and a further 30 additional issues with the Independent Police Conduct Authority investigators.

197. Both the original Police Complaints Authority and the later Independent Police Conduct Authority investigations addressed each of the family's concerns. Where the issues raised by the family were within the Authority's jurisdiction, the findings are explained below.

*Constable Abbott's past service*

198. The family questioned whether or not Senior Constable Abbott had served in Vietnam as a member of the SAS. If so (as asked by the Wallace family) why was he not "*more disciplined?*".

199. Senior Constable Abbott did not at any time serve in the Army.

*Consumption of alcohol*

200. The family asked whether or not Senior Constable Abbott had attended a Saturday night social function at the Waitara Fire Station, or in New Plymouth, where he consumed a quantity of beer, prior to being called out at 3.48am on 30 April 2000.

201. The family also asked:

i) whether Senior Constable Abbott was breath tested immediately after he had left the scene; and

ii) Whether persons who attended the Waitara Fire Station function on 29 April 2000 were interviewed by Police.

202. As explained in paragraphs 161 to 166, the evidence indicates that Senior Constable Abbott did not attend any function on the evening of Saturday 29 April 2000 and had not consumed alcohol prior to being recalled to duty.

203. Senior Constable Abbott was not breath tested. As also stated in paragraphs 161 to 166, in the Authority's view Police should consider mandatory breath testing for officers involved in critical incidents.

204. The witnesses who were at the Waitara Fire Station function on 29 April 2000 and interviewed by Police were not asked whether Senior Constable Abbott attended at any stage.

*Psychological health*

205. The family asked about Senior Constable Abbott's psychological health and general state of mind on 30 April 2000, especially in light of his involvement in the AOS incident at the Moturoa Post Bank in 1991. The family also asked about the means by which the Police satisfy themselves that officers involved in a shooting remain fit thereafter for AOS duties and the carriage of firearms on general duties.
206. These issues are addressed in paragraphs 167 to 171.

*Shots fired at Steven Wallace*

207. The family suggested that the wounds inflicted on Steven Wallace were the result of him being shot in the back by Constable Dombroski.
208. In relation to this, the family also asked:
- i) whether or not all shell cases were recovered from the scene in McLean Street;
  - ii) what process was used to determine which firearm the shots came from;
  - iii) whether all the shots fired were established as having been fired from Senior Constable Abbott's weapon;
  - iv) when and what testing was carried out to exclude the possibility that other armed Police at the scene (including Constable Dombroski) could have fired one or more shots at Steven (in particular, what ballistics tests, residue (gunshot) tests, fingerprinting and other forensic testing, and tests of Steven Wallace's clothing/body);
  - v) how many shots were fired and, of those, how many hit Steven;
  - vi) of those that hit Steven, how did Police establish whether or not they all came from the same weapon;
  - vii) what evidence was given during the trial of Senior Constable Abbott in relation to the number of Police officers who shot at Steven Wallace.
209. Any suggestion that the wounds inflicted on Steven Wallace were the result of him being shot in the back by Constable Dombroski while Steven Wallace

was on the ground is totally unfounded. All available evidence confirms that (a) Constable Dombroski did not fire his pistol, and (b) the final shot fired by Senior Constable Abbott struck Steven Wallace in the shoulder area as he was already falling to the ground, not as a deliberate shot to the back.

210. In response to the family's specific questions:

- i) All shell cases were recovered from the scene in McLean Street.
- ii) The process used to determine which firearm the shells came from was outlined in expert evidence given by the ESR scientist who examined both pistols and the Police Armourer who conducted a similar examination. Both examinations, which included ballistics testing, confirmed that all bullets and shell cases came from the Glock pistol used by Senior Constable Abbott.
- iii) The possibility that other armed Police at the scene (including Constable Dombroski) could have fired one or more shots at Steven Wallace was excluded by the expert examination and testimony outlined above. Constable Herbert was unarmed.
- iv) The scientific tests carried out by Police, the pathologist and ESR included an examination of Steven Wallace's clothing and body to determine exactly what path each of the four shots fired followed and where bullets or bullet fragments came to rest. These tests and the evidence given were in accordance with best practice. No residue (gunshot) tests were carried out; these tests should have been carried out.
- v) Five shots were fired, which included one warning shot. Of those, four shots hit Steven Wallace. The process used to determine that they all came from the same weapon is explained above.
- vi) There was no suggestion at Senior Constable Abbott's trial that anyone other than Senior Constable Abbott shot at Steven Wallace.

#### *Presence of uniformed officers in Court*

211. The family asked why so many uniformed Police were present in Court during Senior Constable Abbott's trial. This issue is addressed in paragraphs 193 to 195.



### *Conduct of the Police investigation*

212. The family questioned the quality and conduct of the Police investigation, claiming that it was not carried out as it would have been had Senior Constable Abbott been a civilian. The family expressed the view that it would not have been necessary to bring a private prosecution had the Police investigation been conducted properly in the first place.
213. The Authority's findings on the Police investigation are addressed in paragraphs 189 to 192. The Authority found no evidence to support the claim that it would not have been necessary to bring a private prosecution had the Police investigation been done properly in the first place.

### *Dog handlers*

214. The family asked about the number of dog handlers available to be called out that night - in particular, whether there was sufficient time to call a dog handler or to take any other steps to apprehend Steven Wallace without shooting him. The family also stated that Sergeant O'Keefe, the Officer in Charge of the Waitara Police Station, was a Police dog handler and asked whether he was available to be called out.
215. Sergeant O'Keefe was not a dog handler. As explained in paragraphs 154 to 155, only one dog handler was available and that dog handler was called out.

### *Possession of a PR24 baton*

216. The family asked why Senior Constable Abbott had a PR24 baton in his possession. An expert witness gave evidence at Senior Constable Abbott's trial that the baton was not an option in this case and that only about 10 people in the New Zealand Police are trained to use such batons.
217. The witness was referring to people who had sufficient training and were capable of using a PR24 baton in self defence *in the circumstances faced by Senior Constable Abbott*. This did not preclude General Duties staff such as Senior Constable Abbott from having access to the PR24 baton.

### *Steven Wallace's identity*

218. The family asked why Police did not know the identity of the person shot by Senior Constable Abbott until 6.30am.
219. When he carried out his initial reconnaissance of McLean Street, Senior Constable Abbott did not have access to a Police radio and therefore had no opportunity to check the registration on Steven's car. As already explained, at that point he mistook Steven for David Toa, and identity therefore was not

an issue. When Constables Dombroski and Herbert arrived on the scene, they came under immediate attack and reversed away. From that point, they were responding as quickly as possible to a potentially life-threatening situation. Police later discovered Steven's identity after tracing his vehicle registration and showing a photograph to Senior Constable Abbott.

#### *Access to Steven Wallace*

220. The family asked why Mrs Wallace was not allowed access to Steven when she and the family arrived at the hospital at 7am while Steven was in surgery. He died shortly after 9am and Mrs Wallace has stated that the first time she saw Steven was when his body was brought to the family home late that night.
221. Mrs Wallace arrived at the hospital at 7am but was unable to see Steven Wallace before he died, as he was in the operating theatre undergoing emergency surgery. After he died in surgery, Mr Wallace was asked to identify him; this was because other family members were said to be distraught and acting in a disruptive manner at the hospital. Steven Wallace's body was taken to the family home at 7.30pm on 30 April 2000. Police were unable to release the body any earlier due to the length of time required to complete normal post-mortem procedures.

#### *Timing of interview of Senior Constable Abbott*

222. The family questioned why Senior Constable Abbott was not interviewed until 8.50am and what was going on in the Police station between the time Steven was shot and Senior Constable Abbott was interviewed.
223. There was nothing improper about the timing of the interview. In accordance with best practice, Senior Constable Abbott was kept separate from Constable Dombroski and did not have any improper contact with other Police staff at the Waitara Police Station before being formally interviewed.

#### *Comments by Superintendent Lammas*

224. The family alleged that Superintendent Lammas had prejudged the Police investigations by appearing on television on 30 April 2000 and stating that Senior Constable Abbott's actions were justified. This issue is addressed in paragraph 188.

#### *Senior Constable Abbott leaving Waitara*

225. The family asked why Senior Constable Abbott was removed "from town" before the family knew who had shot Steven.

226. Senior Constable Abbott and his family were relocated by Police Welfare Services shortly after the shooting. This was entirely appropriate under such circumstances.

*Intimidation of witnesses*

227. The family alleged that Police had intimidated witnesses and caused them to change their statements; and that Police officers had committed perjury at the depositions hearing.

228. The Authority found no evidence to support either allegation.

POLICE POLICY AND PROCEDURES

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229. In the period since April 2000, the Police have made several changes to policy and practice in response to issues arising from the shooting of Steven Wallace and the subsequent Police and Police Complaints Authority investigations. These include improvements to firearms training, first aid training for General Duties staff, and media liaison.

# Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

230. The Authority recommends that:

- i) As part of its review of the Trauma Policy, the Police consider developing an appropriate process for confirming that a member who has been directly involved in a 'critical incident' is approved to resume normal duties – including carriage of firearms – with or without conditions.
- ii) Police develop, as a matter of urgency, policy and procedures for compulsory drug and alcohol testing of officers involved in critical incidents, including Police shootings.



Hon Justice L P Goddard  
Chair  
Independent Police Conduct Authority  
March 2009

