

Independence
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Public report on the fatal shooting of Lee Jane Mettam

April 2010



IPCA

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



April 2010

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Glossary of Officers

Officers	Roles	Comment
Officer A AOS	Sniper	O/C AOS (officer in charge of the Armed Offenders Squad) at time shot fired. Manned inner cordon front of shop. Voice appealed Ms Mettam prior to the shot being fired. Shot Lee Mettam.
Officer B AOS	Sniper	Manned inner cordon front of shop. Voice appealed Ms Mettam prior to the shot being fired.
Officer C AOS	General Duty AOS	In first group of AOS to arrive at scene. Saw Ms Mettam's first appearance outside the shop. Not in AOS gear. Was on top of building across road from Vodafone shop at time of shooting.
Officer D AOS	General Duty AOS	In first group of AOS to arrive at scene. Saw Ms Mettam's first appearance outside the shop. Voice appealed Ms Mettam prior to the shot being fired. Was next to Officer B at time shot fired.
Officer E AOS	General Duty AOS	Part of Entry Team.
Officer F AOS	General Duty AOS	Part of Entry Team.
Officer G AOS	General Duty AOS	Part of Entry Team.
Officer H AOS	General Duty AOS	Initially manned inner cordon from rear of Vodafone shop. Made up part of Entry Team after shooting.
Officer I AOS	2IC AOS Rank - Sergeant	Part of Entry Team.
Officer J AOS	O/C AOS Rank - Sergeant	Deployed with Entry Team.



Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 9.58am on 23 October 2008, in Whangarei, a Police officer acting in the execution of his duty fatally shot Lee Jane Mettam.
2. The Police notified the Independent Police Conduct Authority of the shooting, and the Authority conducted an independent investigation.
3. The Authority's investigation considered matters of Police conduct and compliance with relevant laws, policies, practices and procedures. This report sets out the results of that investigation, and makes findings and recommendations.



Background

INDEPENDENT POLICE CONDUCT AUTHORITY

SUMMARY OF EVENTS

Lee Jane Mettam

4. In October 2008, Lee Mettam, a Work and Income beneficiary aged 37, was living in a flat in Whangarei with friends.
5. Ms Mettam had been a heavy drug user since the age of 14. At the time of her death she was addicted to heroin and LSD, was on a methadone programme and was a user of cannabis and methamphetamine. She was also a heavy user of Rivotril, a prescription drug that affects the mind and can cause mood swings.
6. When interviewed following Ms Mettam's death, a friend said:

*"I've seen her high on both Rivotril and P and I prefer her high on P...
The Rivotril had a bad effect on Lee and was the worst out of all the drugs she used."*
7. Lee Mettam had come to the attention of Police on many occasions, and had 63 previous convictions for various offences, including possession of class A, B and C drugs, dishonesty, threatening to kill, injuring with intent to cause grievous bodily harm and unlawful discharge of a firearm.
8. A Court-ordered psychiatric report on Ms Mettam in 2002 found that she was not suffering from mental illness and there is no evidence to suggest that she was suffering any such illness at the time of her death.
9. Lee Mettam had a long association with a Whangarei family (the X family) which began when she was in a relationship with their son. In 2002 that relationship ended. However, the X family continued to support her, and Ms Mettam went to live with Mr and Mrs X and their daughter Miss X shortly after her release from prison in December 2003, before moving out on her own.
10. Miss X and Lee Mettam were very close and referred to each other as sisters.

Events leading to the shooting

11. About 13 October 2008, Miss X asked Lee Mettam to introduce an associate of hers to Ms Mettam's methamphetamine supplier. This introduction took place.
12. A few days later Lee Mettam complained to Miss X that her associate had not paid for the methamphetamine. Lee Mettam claimed that she had been 'ripped off' and blamed Miss X for this.
13. On 19 October 2008, at about 8am, Lee Mettam broke into Miss X's home and assaulted her, claiming that Miss X owed her \$100. Ms Mettam demanded Ms X's car keys and said that she would get her car back when the \$100 debt from the drug transaction was paid. Miss X said, about that incident:

"I could see she was really wasted, but she's wasted most of the time. She's pretty much a fried fritter all the time these days."

14. Miss X called the Police and reported her car as stolen. She did not tell the Police that Lee Mettam had stolen the car. Later that day Mr X told the Police that Miss X wanted to withdraw the complaint. This was after Ms Mettam threatened the X family that *"...if we went to the cops [Miss X] would end up in someone's boot"*.
15. Miss X asked her parents for help and Mr X agreed that he would pay \$100 to Ms Mettam as long as Miss X's car was returned at the same time. The meeting and exchange took place later on 19 October.
16. During the evening of the same day, Lee Mettam sent a text message to Miss X demanding she pay a further \$800 or her life would be in danger. Miss X again sought her father's help. Mr X telephoned Lee Mettam and told her that he would not pay the \$800.
17. In the early afternoon of 21 October 2008, Lee Mettam and a gang member arrived at Vodafone Mobile First on Reyburn Street in Whangarei, where Mr X worked. Mr X was not at work at the time. However, a staff member called his mobile phone and he spoke to the gang member. Mr X was threatened that if he did not pay the \$800 there would be consequences. Mr X then agreed to pay Lee Mettam on the condition that that was the end of the matter.
18. Throughout the day, Miss X received many threatening text messages from Lee Mettam, in the nature of *"im going 2 smash u up"* and, if her parents did not pay, *"they wil have 1 daughter less"*.
19. Later that afternoon Mr X met the gang member and gave him \$800. Lee Mettam was present at the time but was not involved in the transaction. Mr X asked the gang member to ensure that Ms Mettam never came near his family again. The gang

member assured Mr X that this was the end of the matter and gave Mr X his mobile number to call if anybody hassled him again. The Police were not told of this incident.

20. On the morning of 22 October 2008 Lee Mettam accosted and assaulted Miss X in central Whangarei and told Miss X that the matter was not over. Miss X went to the Whangarei Police station and reported the matter.
21. Later that day, Lee Mettam began texting Miss X and Mrs X demanding \$5000 and threatening to kill Miss X if they went to the Police. None of these messages were replied to. During the evening Mr X also started receiving texts, one of which said:

"[Mr X] u nt ring me up yr p.hoe daughta dead".

22. Lee Mettam also repeatedly telephoned the X family home.
23. Fearing for Miss X's safety, Mr X moved her and her daughter to a motel for the night.
24. The following morning, 23 October 2008, Mr X stayed home to protect his family and, because of the threats, had his home telephone disconnected.
25. At 9.36am on 23 October 2008 Mr X received a call from a colleague to tell him there was a situation at the shop involving the woman who had come into the store a few days before, that she had taken a member of staff hostage, and had a shotgun.
26. A few minutes later, Mr X left home heading for the Vodafone shop. En-route, he telephoned a local detective and advised him of the hostage situation. By then, the Police were already in attendance at Reyburn Street.

Lee Mettam's actions on 23 October 2008

27. Lee Mettam entered the Vodafone Mobile First shop at 9.24am that day and asked for Mr X. She was armed with an air rifle, which was concealed under her coat.
28. CCTV footage from four sensor-activated cameras mounted in various positions inside the Vodafone shop show much of what followed. (There is no sound associated with this footage.)
29. A Vodafone employee (who later became the hostage), was working in the customer area and recognised Ms Mettam as "Lee" who had come in a few days earlier. He saw that *"[t]here appeared to be the butt of a rifle hanging below her coat, and I knew that she had a gun of some kind."* The employee told Lee Mettam that Mr X was not at the shop. Ms Mettam then opened her coat and took out the rifle, pointing it at the employee's stomach and saying something like *"You'd better get him on the phone now. Take me to where he is."*

30. Lee Mettam walked through the shop to satisfy herself that Mr X was not on the premises. The employee then led her to the manager's office because he wanted other staff to be aware of what was going on.
31. Holding the manager at gunpoint, Lee Mettam demanded two mobile phones and cash. She was taken to the front of the store and given two phones and the overnight till float, which was mainly coins.
32. Still presenting the firearm at the manager and employee, Ms Mettam then asked for more mobile phones and was given them. She then demanded a car. As the manager walked to the rear of the premises on the pretext of looking for a car, Lee Mettam said;
- "You better not have called the Police cause if the Police are involved someone's going to get shot."*
33. At this stage only Lee Mettam and the employee (hereafter referred to as the hostage) were at the front of the shop. The remaining eight staff had escaped via the rear door. The hostage said:
- "She seemed to get very aggressive and agitated at this time, and I felt very scared. I really believed at this time that she could shoot me, that she was capable of pulling the trigger."*
34. Once the other staff had escaped they made three 111 calls to the Police Northern Communications Centre (NorthComms). These calls are discussed further in the 'Initial Information about the firearm' section, paragraphs 37-39.
35. For the next 27 minutes, Lee Mettam kept the hostage at the front of the shop. The CCTV footage shows that Ms Mettam was sometimes pacing, sometimes sitting, sometimes aggressive with the gun, and sometimes relaxed. This visual record of her erratic behaviour supports the hostage's belief that she was capable of shooting him and his statement that on several occasions Lee Mettam actually threatened to shoot him.
36. The CCTV footage also shows, at 9.50am, Ms Mettam removing a small medicine bottle or vial from her coat and drinking from it, while still pointing the rifle at the hostage. The hostage said that, after Ms Mettam drank the contents, she said: *"This is just a bit of pain relief for when the cops shoot me."* The hostage said that he replied: *"No-one's going to get shot today"*, and tried to convince her that things would be okay if she put the gun down.

Initial information about the firearm

37. The first of the three calls from Vodafone staff was received at NorthComms at 9.24.26am. The caller said: *"There's a lady walked in with a gun."* When questioned

further the caller said that it was *"a long gun"*, and further, *"It's like a shoot, a slug gun."*

38. The second call was received 27 seconds later, at 9.24.53. The immediate advice was *"15 Reyburn Street please, somebody has got a gun."* The caller also said that he knew the woman as *"Lee"*. When describing the gun, the caller said that it was *"big"* and agreed when the NorthComms call taker asked if it was like a shotgun.
39. The third call was timed at 9.25.46. The caller said: *"There's a lady in our shop with a gun."* When pressed for a description of the gun, the caller said: *"It's a rifle, I can't see, the Police are here now but... I've just seen, I've seen the butt of it."* Another Vodafone employee then came on the same line and said that the gun had a black barrel, that it was semi long, with a brown handle and was *"sort of like...a slug gun"*.

Initial Police response

40. NorthComms dispatched patrols to the scene at 9.25.33. The initial information given to patrols was: *"I've got a P1 robbery 15 Reyburn Street, Whangarei, a female has walked in with a gun."* A Priority 1 (P1) classification indicates a serious threat to person or property.
41. The travel time between the Whangarei Police Station and the Vodafone store on Reyburn Street is approximately 1 minute.
42. A single-crewed patrol was the first to arrive at the scene, 1 minute and 16 seconds after dispatch. A few seconds after arrival, the officer advised NorthComms: *"I'm at the scene now the woman's still inside the ah shop with the rifle apparently... it sounds like she's got a hostage in the shop."*
43. At 9.27.06 the shift Sergeant, who was en route to the scene, heard this communication and immediately asked NorthComms to notify the Whangarei Armed Offenders Squad (AOS).
44. The first officer went to the rear of the shop because NorthComms had advised that the offender had *"gone out the back of the premises"*. He remained at the rear of the shop, while other officers arrived. Some of these officers were armed. They took up positions for the purpose of establishing visual contact with Lee Mettam and her hostage, establishing cordons, and diverting the public away from the immediate and general locality.
45. Police policy and practice requires that the first officers responding to an incident of this nature move, within the available resources, to cordon the area and contain the offender. An inner cordon is set up to contain the offender and an outer cordon keeps people and vehicles out, and clears streets and buildings. When AOS members arrive

they take responsibility for the inner cordon. Until they arrive, that responsibility rests with general duties staff, who maintain positions from which to provide information to the Communications Centre and the Incident Controller.

46. One of the first officers to arrive at the scene established an observation position on the roof of a building across the road from the Vodafone premises, helping to establish the inner cordon.
47. At 9.30am a Senior Field Supervisor, a Detective Senior Sergeant, arrived at the scene, and established a 'Safe Forward Point' (SFP) at the roundabout of Reyburn Street and Curruth Street Service Lane. The SFP is a gathering point for briefings, and the allocation of roles and equipment. At 9.31 he formally took over command and control from NorthComms by radio, saying *"Yeah North Comms, [call sign] Can you assign me Incident Controller of this matter until advised otherwise. Could we make sure AOS have been paged and I just want to establish exactly where we've got cordons in place. Over."* Hereafter, this officer is referred to as the Incident Controller.

Officers A and B

48. Officer A has served in the New Zealand Police since 1996 and had been a member of the AOS for over eight years. He was one of two specialist AOS snipers in Whangarei in October 2008. Officer A was armed with a Ruger Marksman 7.62 bolt action rifle and a Glock 17 pistol.
49. Officer B was the other specialist AOS sniper. At the time of the incident he had eight years' service with the New Zealand Police and had been a member of the AOS since 2004. He was armed with a Ruger Marksman 7.62 bolt action rifle and a Glock 17 pistol.
50. Both officers were wearing AOS overalls, ballistic vests and AOS equipment vests, and both were carrying Oleoresin Capsicum (OC) spray, an ASP baton, a tear gas canister and distraction devices. Both officers were up to date in all AOS training.
51. In terms of the AOS structure, Officer A is senior to Officer B.
52. The role of the AOS Sniper was described by Officer J, the Officer in Charge of the Whangarei AOS as:

"They have a slightly different role in big centres but here in Northland because of less numbers we generally try to get them to the best spot should they need to shoot but also for intelligence to pass back."

Deployment of Officers A and B

53. Officer B was working alone at a community Police station when he became aware, via Police radio, of the developing situation at the Vodafone shop.

54. As soon as he heard mention of a firearm he started to lock up the station as he knew there would probably be an AOS callout.
55. At 9.26am, Officer B telephoned Officer A, who was off duty. He advised Officer A of the circumstances as he then knew them and said he would pick him up. During the drive Officer B had his lights and siren activated.
56. As soon as Officer A got in the car, Officer B updated him on the situation as it was being reported on Police radio. This was to the effect that there was a “disgruntled” female offender with a long barrel rifle or shotgun who had hostages detained in the shop.
57. It took about 10 minutes for Officers A and B to arrive at the Whangarei Police Station. Officer B later said that his AOS pager went off just before he arrived.
58. At the AOS squad room, Officers A and B got changed and donned their AOS equipment. Just as they were leaving, the head of the Whangarei AOS, Officer J, arrived.
59. When questioned by the Authority about why Officers A and B did not wait for Officer J before going to the scene, Officer A said:
- “We knew what we had down there, an active shooter and he, officer J was nowhere ready to go and it was just down the road. There were other cars waiting. In any other jobs we would have waited but the job was unfolding and we needed to get to the scene.”*
60. Officer B drove Officer A and himself to the SFP in a marked Police car with lights and siren operating. En route, Officer A gave ‘fire orders’ in accordance with Police General Instruction F061. The officers listened to the NorthComms radio traffic and Officer A recalls Officer B saying “Gees, this is the big one” or words to that effect. Officer A said: “I took this to mean that he thought that this was a job of a very serious nature.”
61. General Instruction F061 reminds officers that they must always be aware of their personal responsibilities in the use of firearms. It outlines the relevant sections of the Crimes Act and sets out the circumstances in which the use of lethal force is justified. In pre-planned operations or in other situations when operational orders are given to a group, the officer in charge gives fire orders before the team deploys. If an officer is alone, it is that officer’s responsibility to turn his or her mind to the provisions of F061. This instruction will be referred to again in the ‘Relevant Laws and Policies’ section (from page 25) and in ‘The Authority’s Findings’ (from page 33).
62. When Officer J was asked whether or not he was happy with the way Officers A and B left the squad room, he said:

"...I wasn't worried about it because I realised they knew more about the incident than I did. There was nothing I could brief them on, they are good squad members, I trusted them, they knew what they were doing."

63. When asked whether or not he thought the situation was so critically urgent that Officers A and B should be deployed without team leader instruction, Officer J said:

"Yes, don't have a problem with them getting to scene, a critical incident was fast happening and I would rather have two members of AOS with their gear deal with it instead of two members of an I car." (a general duties patrol).

64. The Authority asked Officer J if he was satisfied at the manner in which the AOS staff were deployed from the AOS room in this Operation. Officer J said:

"It is always my preference that guys don't deploy without a team leader except in exceptional circumstance. In this instance the case was such that the members were deployed and I am glad that it was these two members, A and B were the two who were deployed. I have no problems with it whatsoever."

Deployment of the Northland AOS

65. There was a delay of about 10 minutes between the radio request to call out the AOS and the AOS actually being paged. When questioned by the Authority about the delay, Officer J said:

"I think ten minutes is not acceptable but it happens. There has been this issue before and I have queried and the system they have that the inspector must approve and they have to find the inspector to issue that authority."

66. The same question was put to the Inspector in charge of NorthComms at the time. He said that he mistakenly thought that the AOS had been paged when this was first requested (at 9.27am). It appears therefore that the 10-minute delay resulted from an oversight on the part of the Inspector.

67. At the time of the incident, the Whangarei AOS had 10 members. Four were on duty at the time of the call, and went directly to the scene, without their AOS equipment but with general duties firearms. Two of these officers remained at the inner cordon throughout while two returned to the Police station, at different times, to get their AOS equipment and clothing before returning to the SFP. The last five officers had only just arrived at the SFP at the time the shooting occurred.

Events leading up to the shooting

Lee Mettam's first appearance outside the front door

68. At about 9.47.43am, 22 minutes after the first patrol was dispatched to the scene, Lee Mettam made her first of two brief appearances onto the footpath from the front door of the Vodafone shop.
69. The Vodafone shop front consists of a full-length glass pane, with double aluminium glass doors towards the left side, facing the shop. The left-side door was bolted closed, and the right opened inward. The double doors are recessed slightly away from the footpath.
70. The appearance was observed by AOS members, C and D, who had arrived (without AOS equipment) with some general duties staff. Another AOS member, Officer H, was at the rear of the premises.
71. Lee Mettam's move to the footpath was watched by the hostage, who had been left in the store, and seen by 12 other civilian witnesses. All witnesses said that Ms Mettam came out just beyond the shop doorway, and that she was armed with a long barrelled firearm. The consensus of these witnesses was that, during her appearance, Lee Mettam was pointing the firearm at the ground in front of her.
72. The hostage observed:
- "I saw her open the door. She was holding the rifle in the same position, about stomach height. I heard one of the cops scream something at her. She immediately shut the door and came back inside."*
73. After viewing the CCTV footage of this part of the incident, the hostage recalled:
- "She immediately came back towards me with a very aggressive stance, pointing the gun at me. I didn't really recall this when I made my first statement, but I recall now thinking, 'oh oh, here we go', and thinking that she was in a very desperate state at this time. I was thinking she may either shoot, or she may end up getting shot, because she was acting so aggressively and was very agitated."*
74. Officer C said:
- "The second she came out of the store I challenged her. I yelled out 'Police put down the gun'. I yelled a couple of times."*
75. Officer D said:

"I used words similar to 'Stop armed police put the weapon down.' I said that a couple of times and she turned and looked straight at us. Whilst looking at us she turned and went straight back inside."

The arrival of Officers A and B

76. Officers A and B arrived at the SFP just after Ms Mettam's first appearance outside the front door.
77. As Officer A got out of the patrol car he put his rifle into the action state by chambering the top round and leaving the safety catch on. Normally the officer would have done this when deployed forward from the SFP, but Officer A said that he did it early because he thought:
- "We may have to complete an immediate action upon arrival due to the unfolding incident and so I wanted to be ready for this eventuality if it occurred."*
78. A command area, from which the Incident Controller managed the incident, had been set up at the SFP, close to the intersection of Reyburn Street and Carruth Street Service Lane. The command area had radio communications with NorthComms and all other general duties radios.
79. The AOS command vehicle arrived at the scene at 9.37am. The AOS vehicle, manned by the hostage negotiation team, was parked a short distance from the SFP and had the use of the general duties radio as well as the AOS encrypted radio.
80. At the command area, Officer A was advised that just prior to his arrival Lee Mettam had come out of the shop with a firearm and that she had been "voiced" (called upon to surrender), but that she had not and had gone back into the shop.
81. At that time, the only members at the scene with AOS equipment were Officers A, B and H. Officer A, as the senior of the three, decided to try and 'triangulate' the scene for the purpose of containing it. Officer H was already at the rear of the Vodafone shop. Officer A therefore tasked Officer B to get into a position that covered the front right corner of the Vodafone shop, from across the road, a primary task being to give quality information to the AOS Commander, when he was set up at the SFP.
82. Officer B positioned himself behind the counter of a shop across the road from the Vodafone shop. He had a clear view of the front of the Vodafone shop from a distance of approximately 34 metres.
83. Officer A covered the front left corner of the scene from a position on the opposite side of the road, behind a parked car. He said that he thought *"...this position would be the best position for me to see what was happening as I was effectively the Forward AOS*

Commander at this time." As he was deploying, Officer A reported on the AOS radio that he had given fire orders to himself and Officer B.

84. Officer A said he was aware and mindful that there were people in shop windows within the outer cordon, and that the offender had come out of the Vodafone shop just before his arrival.
85. He said: *"Due to this I wanted to quickly get the AOS members in between the offender and members of the public and Police who were in the immediate area and who would be at threat from the offender with a rifle."*
86. Officer A had an unobstructed view of the entire shop front, doors and windows. He saw Lee Mettam pacing around the shop, pointing and waving the rifle, and said that her behaviour looked *"erratic"*. He saw Ms Mettam point the rifle in the direction of the hostage, who was seated.
87. From its general appearance, Officer A thought the weapon in Lee Mettam's possession was a high powered rifle, due to the type of foresight it had on it. He said that he felt that the hostage was under *"a very obvious threat"* at this time, but made a conscious decision not to shoot because he knew bullets can deviate or fragment on hitting glass.
88. At approximately 9.58am, the front right hand door of the Vodafone shop opened and Lee Mettam stood in the doorway holding the rifle.

The shooting

89. This second appearance outside the shop was seen by Officers A, B and D, two general duties officers, the hostage and a number of other witnesses.

Officer A

90. Officer A said that as soon as the doors opened he started to voice appeal Lee Mettam, saying something like *"Armed Police, put the fucking firearm down now, do it now."* He said that he did this in a very loud voice by yelling it out, but in a controlled manner so that it was clear to her what he wanted her to do. Officer A said that he *"was essentially trying to control and negotiate with her, but she was not listening to me"*. He said that he kept *"voicing"* her right through to just before he fired at her.
91. Officer A described Lee Mettam as pointing the rifle downwards and looking around, when she first came out of the shop. He said that:

"She was obviously a real threat to us because she could easily bring the rifle up into the aim position and shoot at us, however because she did come out in this way and not with the rifle up in the aim position ready to shoot, I was able to voice her first."

92. Officer A said that he *“still thought at this time that it was a high powered rifle”*. He said that he considered and discarded the possibility of using other options, such as baton, OC spray or Glock, having the view that these options would be of no use in dealing with Lee Mettam, because he would have had to break cover and get closer to her to use them.
93. Officer A said that Lee Mettam then brought the rifle up into the aim position and he thought she was going to shoot someone. He said Ms Mettam initially pointed her rifle in the direction of the shop where Officers B and D were positioned. She then swung the rifle towards Officer A as he continued his voice appeal.
94. In Officer A’s view Lee Mettam would have both seen and heard him. He said that although he was behind a vehicle, his helmet and rifle were visible across the bonnet of the vehicle. Officer A said: *“She would have only been pointing it directly at me for a split second before I fired at her.”*
95. In relation to the hostage, Officer A said:

“From the time that she came out of the shop I watched the offender through my scope. My sight picture through the scope is magnified but I could see her whole body as I was aware of the male hostage and I wanted to make sure that he did not come out with her.

I did not see where the male was but he was not directly behind her and I did not see him in the sight picture. I was happy that I could incapacitate her without endangering the lives of any other person including the male hostage.”

96. Officer A fired the single shot that killed Ms Mettam. In relation to that shot, Officer A said:

“My trigger finger remained outside the trigger guard until such time as I made the decision to fire. That is how we train, it is a Police and AOS requirement and something that I know and am aware of, and on that day my finger was outside the trigger guard.

At the time I fired at the offender to incapacitate her as I feared that she was going to shoot me with the rifle, as she was non compliant and I thought that she was going to kill me or hurt me very badly. I was constantly thinking of Section 48 of the Crimes Act 1961 throughout this time as it is a major consideration in what we do when we deploy.

From the time that she came out of the shop I aimed the cross hairs of my scope at her centre mass, which is her sternum in the middle of her chest. At

the time I pulled the trigger and shot the offender this is where I was aiming.”

97. Officer A said that the next thing he did was chamber another round, while watching the offender. He reported by AOS radio that he had fired a shot. Officer A said that he thought he had only injured Ms Mettam because she *“didn't just collapse on the ground when she was hit, she stumbled back into the shop. I thought that I had only hit her in the arm”*. He said that he was concerned about the hostage *“because she had gone back into the shop and that the male was now in danger because I had only partially incapacitated her”*.

98. Officer B then radioed that the offender was *“down”*.

Officer B

99. Officer B said that he as soon as he saw Lee Mettam open the front door he shouted *“Armed Police, put the gun down, armed Police and at that very moment she turned and as she turned she raised her firearm and she aimed her firearm at me.”*

100. Officer B said further:

“I was in standing position, my rifle was raised however my rifle was slightly lowered because as I was yelling at her I could not keep a steady aim on her and in an instant she was up in aim position at me.

As I raised my rifle I pushed the safety forward into the instant and as I got her into my sight picture of the rifle scope I heard a gunshot. My sight was on her at the time of the gunshot. The gun shot echoed around the particular building I was in. I did not know who had fired the shot but when the shot was fired I was preparing to fire a shot myself because I feared for my life as she was going to shoot me. My sight picture of her was centre mass, her chest.”

101. Officer B said further:

“I saw her flinch, she kind of bent forward a bit and I believed at the time that the shot may have been in the stomach area. She kind of shuffled back in the shop as if she was stumbling backwards. She didn't turn and go back in.”

Officer D

102. Officer D said that he challenged Lee Mettam with the words: *“Put the weapon down, put the weapon down.”* He said at the same time he could hear another officer challenging her. The other officer sounded a lot closer than him. Officer D said:

"I now know that person was [Officer A] but did not recognize his voice at the time.

Whilst I was challenging her she was looking at me but she then turned her head towards [Officer A] and immediately swung the rifle up and it swung up so fast (sic) that it actually went past parallel with the road. It was swung in the direction the way she was looking I heard a shot and saw her get hit..."

General duties officers

103. Two general duties Police officers also saw Lee Mettam's movements and heard the voice appeals.
104. One officer, armed with a Bushmaster rifle, who was about 40 metres from the front door of the shop and had an unobstructed view, said that when Lee Mettam stopped in the doorway *"She looked to me like she was going to fire a shot. It was the way she walked out to the front of the shop like she had real purpose."* He said that he had real concerns for the safety of civilians and Police officers in the line of fire and so he *"took aim at her from a standing position"* and moved further right to get into a position from which he could fire safely. He said that as he did so Lee Mettam raised her firearm to an *"aim"* position, and further:

"As she did this I was preparing to take a shot at her as I thought that she was definitely going to fire her weapon, I was still trying to get into a position where I could discharge my firearm safely.

As I was preparing to take the shot I heard a firearm discharge and I thought that she had fired. I then saw her disappear backwards into the shop at which time I realised that she had been shot by Police."

...

"I've have no doubt that she would have fired her weapon had she not been shot first."

105. The other general duties officer was 33 metres from the shop front, looking down from a rooftop onto the front door. He said that Lee Mettam appeared to scan the area across to his location. He then saw her lift the end of the barrel *"up horizontal to about stomach or chest level."* He said that she was holding the gun *"like you would if you were to fire a long firearm with one hand"*. She pointed the firearm and *"as she has done this, I have heard one loud Bang. It sounded to me like a shot being fired, & my first thought was that she had fired her firearm. In a split moment I leaned back away from the window, thinking she might be taking aim at me, or shooting in my direction."*

Independent witnesses

106. Because Police had taken action to move members of the public away from the outer cordon, only two independent witnesses saw and heard the shooting. Two others saw but did not hear the shooting and six heard the Police voice appeals but did not see the shooting.
107. One of the witnesses who saw and heard the shooting, having a clear view of the Vodafone entrance from a neighbouring shop, said:

“She lifted the weapon up with right arm, left hand joining the rifle in a normal shooting position/stance.

Her left arm was straight out under the weapon holding onto the stock...

The woman was aiming the rifle as though she was about to fire at someone or something. She held the rifle in this position for about 2 seconds...

The woman knows how to carry and handle weapons due to her confident handling when walking pointing and aiming.

The rifle was holding, I am 100 percent sure, was pointing directing at the AOS officer who had the rifle across the road from the Vodafone shop.

Almost instantaneously when she raised the rifle I heard at least 3 voices shouting. The voices I’m sure came from the AOS officers over to my right hand side.”

108. This witness then described seeing Lee Mettam walk into the shop and stand between the front window and the chair with the weapon by her side before she was shot. It is clear, however, from the CCTV footage of the shooting, that Lee Mettam did not turn and enter the shop before she was shot. This witness, who was talking on his mobile phone when the shot was fired said: *“Things now happened so fast, it is a little hazy for me to say exactly where the rifle was or what it was pointing at.”*

109. The second witness had a restricted view of the doorway. In a statement made the day following the shooting, she said:

“...the next thing I heard was a voice telling someone to ‘put down that weapon’.”

...

“It seemed a long time, I could hear people on top of the roof of our building and more shouting which I think was coming from the alcove which is to the right of the front of the store.

I heard what I believe to be a Police Officer shout again ‘put down your gun’.

I definitely heard that command twice. There was also a lot of shouting.

Right as I heard put down your gun, I looked up towards the Vodafone store and I saw someone standing in the doorway and then I heard a shot."

110. Two other witnesses saw, and heard the shooting, but did not hear the voice appeals or shouting as they were inside buildings. In describing the moments just before Lee Mettam was shot, one said:

"When the person stepped out the gun they were holding was slightly raised. As the person moved out they lifted the gun upwards to approximately 45° degrees to start with. They almost immediately after a slight hesitation lifted the gun to approximately 85° degrees & pointed the gun in the direction of where I had only a few minutes earlier seen an armed police officer kneeling by a grey ute...

Almost immediately after the person had lifted the gun to 85° degree I heard a loud gun shot."

111. The second witness said:

"When she was outside the door she raised the gun up. She raised her hand from hip height with the gun pointing down to the gun being chest height and pointing straight across the road. This was in a reasonably swift movement.

I heard a bang and saw her jolt back.

The bang was directly after the gun was pointed across the road."

112. Six other independent witnesses reported that they heard the Police voice appeal to Lee Mettam immediately before they heard a shot.

Events immediately after the shooting

113. Officer J arrived at the SFP at about the same time as the last four AOS members. He was about to be briefed by the Incident Controller, but within 30 seconds of his arrival the shot was fired.
114. Officer J then elected to go forward with the AOS Entry Team which was deployed immediately after the shot, rather than staying at the AOS command vehicle in a command and control role. He had not been briefed by the Incident Controller and the Incident Controller did not have direct access to AOS radio.
115. Within about two minutes of the shot being fired, the entry team had talked out the hostage and entered the shop. While some checked that there were no other people inside, the others applied first aid to Ms Mettam.
116. The Incident Controller radioed NorthComms and requested that an ambulance be sent to the SFP. He did not advise NorthComms that a shot had been fired. The ambulance

service was notified but because NorthComms did not know of the shot, the urgency of the situation was not passed on and the ambulance did not arrive for 25 minutes.

117. Four follow-up calls had been made to NorthComms from the SFP asking for the estimated time of arrival of the ambulance, before NorthComms were actually told that a shot had been fired.
118. It is a Police standard operating procedure, when dealing with armed incidents, for the ambulance service to be notified and put on standby at an early stage. In this case, that notification did not occur until after the shot had been fired, which was about 30 minutes after the AOS had been paged.
119. While waiting for the ambulance, Police officers performed CPR on Lee Mettam. Upon arrival, the ambulance officer found that Ms Mettam had no vital signs and at 10.32am, declared her dead.
120. The Auckland Chief Pathologist advised the Authority that Ms Mettam's injuries were non-survivable. He said that even if ambulance staff had attended to Ms Mettam at same time as Police (two minutes after the shot), earlier medical assistance would not have saved her life.

POLICE INVESTIGATION

121. Following the shooting, the Police carried out a homicide investigation into Lee Mettam's death and a disciplinary investigation in respect of Officer A's actions.
122. The Northland District Commander appointed two senior investigators from outside the District to carry out the investigations. All AOS staff were interviewed by out-of-district investigators.
123. Police considered the criminal liability of Officer A and, following an internal legal opinion, which was reviewed by a Crown Solicitor, concluded that the actions of Officer A were *"entirely appropriate and legally justified"*.

CCTV Footage

124. The interior of the Vodafone premises was monitored by four sensor-activated cameras. The actions of Lee Mettam, the hostage and other Vodafone staff inside the premises were captured. However, the cameras did not cover the area immediately outside the front door where Lee Mettam was standing at the time she was shot. The footage shows Ms Mettam walking to and opening the door before apparently being pushed back inside by the force of the shot.

Environmental Science and Research

125. An Environmental Science and Research scientist who attended the scene and the autopsy formed the view that the bullet from Officer A's rifle struck Lee Mettam's rifle, fragmented, then struck her right thumb and chest.
126. At the time she was shot, Lee Mettam was standing in the shop doorway alcove, which was recessed back from the footpath.
127. The scientist concluded:

"Using the position of the gunshot wound to Ms Mettam and the bullet strike to the air rifle, it is my opinion that the rifle would have been held in front of her and slightly below the wound entrance. The muzzle of the rifle would have been angled slightly downward and to the right of the shooter."

Cause of death

128. A post-mortem examination of Lee Mettam concluded that her death was caused by a single gunshot wound to the chest. The pathologist commented further that:

"The configuration of the wounds noted at the post-mortem examination and the bullet fragments recovered are consistent with a single gunshot from a high velocity weapon striking an intermediate object (the deceased's rifle) before striking the individual. The intermediate object caused fragmentation of the bullet as well as the possible production of secondary missile wounds from the intermediate object."

129. In relation to the injury to Lee Mettam's right thumb, the pathologist noted:

"On the dorsum of the right thumb, just beneath the thumb nail, is a transverse 1.5 x 1cm gunshot wound which extends to the surface of the underlying bone... Recovered within the wound is a several millimeter tiny grey metal fragment. An apparent grey metal fragment is embedded in the bone tissue."

Ballistics

130. The Police Armourer found that the Ruger 7.62mm Model 77 marksman bolt action rifle (also referred to as a .308) used by Officer A was mechanically sound and an ESR forensic examination confirmed that the cartridge case located at the scene had been fired from Officer A's rifle.
131. The ESR scientist also concluded that the entry wound in Lee Mettam's chest was consistent with a bullet being fired at a distance of 34 metres. Officer A was approximately 34 metres away from the Vodafone doorway when he fired the shot.

Toxicology

Officer A

132. Officer A's blood was tested for the presence of drugs and alcohol. No drugs or alcohol were detected.

Ms Mettam

133. Urine and blood samples taken from Ms Mettam as part of the post-mortem procedure returned a positive result for the presence of cannabis and clonazepam, a chemical found in the prescription drug Rivotril. A trace amount of alcohol was detected. No opiate type drugs, including methamphetamine, were detected.
134. Clonazepam is commonly prescribed as an anti-convulsant drug. Common side effects are sedation, confusion and agitation.
135. A toxicology examination of the vial found at the scene confirmed the presence of Clonazepam.
136. Lee Mettam had a tetrahydrocannabinol (THC) level of 4.5 micrograms per litre of blood. The ESR report concluded:

"Given the level of THC in Ms Mettam's blood it is possible she was affected by the drug [cannabis] at the time of death.

I cannot comment on the combined effect of cannabis and clonazepam."

CORONER'S INQUIRY

137. An inquest into Lee Mettam's death has not yet taken place. However, the cause of death and the circumstances in which death occurred are clear.



Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

APPLICABLE LAWS

Crimes Act 1961

138. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use force in the execution of their duties, such as arrests and enforcement of warrants. Specifically, it provides for them to use *“such force as may be necessary to overcome any force used in resisting”*, and applies only if the arrest or process *“cannot be executed by reasonable means in a less violent manner”*.
139. Section 62 of the Crimes Act makes law enforcement officers criminally liable for any excessive use of force.
140. Section 48 of the Crimes Act 1961 provides that: “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.”

POLICE POLICIES

141. The Crimes Act provisions are mirrored in Police General Instructions¹, which restrict the circumstances in which Police can issue, carry and discharge firearms. General Instruction F061 Use of Firearms by Police provides additional guidance for officers. GI F061 (1) states:

“(1) Members must always be aware of their personal responsibilities in the use of firearms. Under section 62 of the Crimes Act 1961 a member is criminally liable for any excess force used. An overriding requirement in law

¹ On 21 October 2009 the Police General Instructions on Firearms were replaced by the chapter on ‘Police Firearms’ in the Police Manual; however in October 2008 the General Instructions applied.

is that minimum force must be applied to effect the purpose. Where practical Police should not use a firearm unless it can be done without endangering other persons."

142. GI F061 (2)(a) directs that Police shall not use a firearm except:

"(a) ...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;"

143. 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."

144. GI F061 also requires that fire orders be given "if time and circumstances permit". The fire orders printed on the inside cover of Officer A's notebook are:

"SHOOTING AN OFFENDER

Police members should not use a firearm except in the following circumstances:

***To defend** themselves or others if they fear death or GBH and cannot protect themselves or others in a less violent manner.*

***To arrest a person** if it is believed the person poses a threat of death or GBH and the arrest cannot be made in a less violent manner.*

***To prevent the escape of a person** and it is believed the offender poses a threat of death or GBH to any person and the escape cannot be prevented in a less violent manner.*

*The offender should be **called upon to surrender** unless in the circumstances it is impracticable or unsafe to do so.*

*Regardless of previous actions, there is no legal justification to shoot a person who is **no longer a threat to life.***

Warning shots should not be made except in exceptional circumstances. They must be clearly aimed so it is clear that it is a warning shot." [**bold & underline emphasis is that of Police**]

- 145. GI F060(6) authorises the issue of firearms to members in any of the circumstances prescribed in General Instruction F061 above.
- 146. GI F059 requires that whenever a firearm is issued, the details must be recorded in the firearms register.
- 147. GI F066 authorises the deliberate discharging of a firearm in any of the circumstances in General Instruction F061.
- 148. Further guidance is provided in the Police Manual of Best Practice, which reinforces the Crimes Act 1961 and reminds staff that there is no justification for shooting a person who is not at that moment a threat to life.
- 149. The manual also sets out approaches to responding to violent offenders, including tactics to be used. In essence, it outlines an approach in which such offenders should be contained if possible using a "wait and appeal" approach. However, if the offender is acting in a way that makes casualties likely, Police must act to prevent this.

Instructions relating to the Armed Offenders Squad

- 150. GI AO93 regulates the deployment of Armed Offenders Squads. It specifies that AOS members are trained for the express purpose of carrying out forward operations against armed offenders.
- 151. The Manual of Best Practice: Use of Firearms by Police: contains a section on the Armed Offenders Squad. It says that "Armed Offenders Squads are maintained in each District to deal with persons who are, or who are believed to be, armed and a danger to themselves, the public or police."
- 152. The Manual sets out the procedures to be used in an AOS emergency. It regulates the establishing of an AOS base, Fire Orders, weapon readiness, the rules of safety, immediate action drills, patrolling, searching and entry, as well as containing the suspect, the use of weapons and communications.
- 153. The Manual lists the duties and responsibilities of the various members of the AOS, including the O/C (officer in charge) Armed Offenders Squad and the first member(s) to arrive at the scene. These are:

"O/C Armed Offenders Squad

The O/C AOS is responsible for commanding and directing the AOS in the forward area. This includes making decisions on:

- *Fire Orders.*
- *Negotiation.*
- *Deception.*
- *Evacuation.*
- *Arrest procedures.*
- *CS gas.*
- *Using police dogs.*
- *Distraction devices.*
- *OC Spray.*
- *Health and safety issues.”*

“When first notified of a potential AOS situation:

- *Obtain all relevant information from the station or Communications Centre supervisor.*
- *Send an AOS advance team to the arrival point, if urgent deployment is necessary. Do not do this until the Section O/C is briefed and given Fire Orders.*
- *Ensure that squad members are correctly dressed, equipped and allocated to sections.*
- *Assess the situation and issue Operation Orders, including Fire Orders.*
- *Establish communications between the AOS base and the Communications Centre or base station, and ensure that they are maintained.*
- *Check that the arrival point is adequate.*
- *Check that the immediate situation is contained and:*
 - *take any immediate action necessary and make a reconnaissance when possible*
 - *consult the Operations Commander to establish boundaries for the inner and outer cordons and confirm tactics in the forward area.*
- *Direct operations within the inner cordon.*
- *Appoint an AOS log keeper.”*

“First to arrive

The first member(s) of the squad to arrive must:

- *Immediately prepare to deploy, and act as the circumstances dictate.*
- *Establish liaison with the O/C Scene and communication with the O/C AOS.*
- *Check the arrival point and confirm the approach route.*
- *Carry out reconnaissance and be prepared to brief the O/C AOS when he or she arrives.*
- *Replace GDB [General Duties Branch] members who are in close proximity to the suspect, as further squad members arrive.”*



The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

THE AUTHORITY'S ROLE

154. Pursuant to the Independent Police Conduct Authority Act 1988, the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
 - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, incidents in which members of the Police acting in the course of their duty have caused or appear to have caused death or serious bodily harm.
155. The Authority's role on completion of an investigation is to determine whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable.

THE AUTHORITY'S INVESTIGATION

156. As required under section 13 of the Independent Police Conduct Authority Act 1988, the Police notified the Authority on 23 October 2008 of the shooting of Ms Mettam.
157. The Authority assigned two investigators. The purpose of the investigation was to determine whether there had been misconduct or neglect of duty on the part of any member of the Police, and to examine the relevant Police practices, policies and procedures. The investigation was separate from, and independent of, the Police criminal and disciplinary investigations.
158. The Authority's investigators attended the initial Police investigation briefings, then monitored the Police investigations throughout and reviewed the documentation produced by the Police investigation team.

159. The Authority's Investigators interviewed Officers A, B and J, the NorthComms dispatcher and controller, inspected the scene, interviewed the leading ESR scientist, and liaised with Lee Mettam's family.

ISSUES CONSIDERED

160. The Authority considered the following issues:

160.1 Carriage and use of arms

- Was Officer A justified in arming himself to respond to this incident and were all procedures for arming complied with?

160.2 The deployment of Officer A

- Was Officer A's immediate deployment, before his fellow AOS officers or his team leader, justified?
- Was the briefing of Officer A at the SFP sufficient?

160.3 The shooting

- Was the position of Officer A at the time he fired the shot, tactically sound in the circumstances?
- Was Officer A justified in shooting Lee Mettam?
- Why did other officers not shoot?

160.4 Other tactical options

- Were other tactical options available and considered?

160.5 Communications, and command and control

- Did the Police comply with all requirements in respect of communications, and command and control; if not, did any failings contribute to the outcome?

160.6 Post-shooting assistance

- Was all reasonable assistance given to Ms Mettam after she was shot?



The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

CARRIAGE AND USE OF ARMS

Was Officer A justified in arming himself to respond to this incident and were all procedures for arming complied with?

161. For relevant law and policy, refer to paragraphs 138-153.
162. At the time the AOS were paged Police had been advised that a woman had entered the Vodafone shop, presented a firearm, demanded cash and phones and was holding a hostage.
163. Once an AOS page had been sent, Officer A was authorised by virtue of his position as an AOS member to arm himself and to deploy to the SFP, or forward of the SFP, as necessary.
164. Officer A's firearm, a Ruger 7.62 bolt action marksman rifle, was personally issued to him and is the weapon authorised by the New Zealand Police to be used by AOS marksmen.
165. General Instruction FO61 provides for the use of firearms by members to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves in a less violent manner.
166. The information available to Officer A at the time he armed himself showed that there was a threat of death or grievous bodily harm to the public and to Police.
167. General Instruction FO61 reminds members of Police that they must always be aware of their personal responsibilities in the use of firearms. It reminds them of the relevant sections under the Crimes Act and sets out the circumstances in which the use of lethal force is justified.
168. It also requires that fire orders be given "*if time and circumstances permit*".
169. AOS policy relating to fire orders states:

*“Specific Fire Orders must be given before any member is deployed with a firearm. **There are no exceptions to this rule.**”*

170. Officer A said that he read out fire orders (FO61) to himself and Officer B from a prompt card in his notebook (see paragraph 143 for exact wording of fire orders).
171. Officer B confirmed that, en-route to the SFP, Officer A read him fire orders. Officer B also said that Officer A referred to FO61 over the AOS radio. This radio transmission was also heard by another member of the AOS.

FINDING

Officer A was justified in arming himself to respond to the incident.

Officer A issued fire orders to himself and Officer B, in compliance with General Instruction FO61.

THE DEPLOYMENT OF OFFICER A

Was Officer A’s immediate deployment, before his fellow AOS officers or his team leader, justified?

172. In October 2008, the deployment of the AOS was governed by Police General Instructions and the Manual: Use of Firearms by Police (see paragraphs 141-153 for detail).
173. The Manual specifically states that an advance team can be sent to the SFP if urgent deployment is necessary, but that this should not occur until the section O/C is briefed and has given fire orders. In Northland there is only one AOS section. In the absence of Officer J, Officer A was the equivalent of section O/C as he is a senior member of the squad and has led the squad on occasions. Officer A reminded himself of fire orders, and gave fire orders to Officer B.
174. The decision to deploy without a team leader was made by Officer A.
175. The officer in charge of the Northland AOS, Officer J, made the following comment about a ‘normal deployment’:

“Normal procedure is that we all chip in and get the gear and cars etc ready, especially the first guys to the squad room once they get their personal kit on they should then be getting the cars ready and loading up for the rest of us arriving behind them. I am not comfortable with the members deploying in an AOS capacity unless under the guidance or control of a team leader

unless the situation is critically urgent in which case the individuals know that they do not need to wait for a team leader instructions to deploy.

In this case [Officers A and B] had made that assessment and I was comfortable with their decision as they knew more about the incident that I did."

176. Officers A and B were the second and third members of the AOS to arrive at the squad room, where they donned AOS uniform and personal equipment.
177. Just before they left the squad room, Officer J arrived.
178. Officers A and B did not wait for Officer J to get ready before going to the SFP, because they knew that the situation was fast unfolding and critical because it involved a person sighted with a firearm.
179. Officer J said that he was not worried about the way Officers A and B left the squad room because a critical incident was in progress and immediate deployment was essential.
180. When Officer A arrived at the SFP he was advised by the Incident Controller that Lee Mettam had shortly before come out of the Vodafone store and been challenged by Police before going back inside.
181. Officer A said that he elected to immediately deploy to establish a position from which he could provide intelligence, knowing that he would also be the senior AOS member in the field at that stage, and would therefore be acting as AOS commander.
182. Officer A stated that:

"It is the first time I have deployed without Zero-Alpha [AOS Commander] but the situation was unfolding, knew she had a firearm and she had come out."

FINDING

Officer A and B's deployment before the rest of the AOS, and before Officer J, was warranted and appropriate in the circumstances.

Was the briefing of Officer A at the SFP sufficient in the circumstances?

183. When he arrived at the SFP Officer A was briefed that:
- A female offender was holding one male hostage at gunpoint in the premises occupied by Vodafone.

- The offender had just come out of the shop with a firearm, had been “voiced” and had gone back inside.
- The only other AOS member present was Officer H, who was deployed at the rear of the premises.
- The identity of the offender was unknown.
- The specific details of the firearm were unknown, other than it had a long barrel.

FINDING

The information supplied to Officer A by the Incident Controller was all that was known at the time.

THE SHOOTING

Was the position of Officer A at the time he fired a shot, tactically sound in the circumstances?

184. On his arrival at the SFP, Officer A was informed that Officer H was covering the rear of the premises.
185. Officer A said: *“What I wanted to do was to try and triangulate the scene for the purpose of containing it.”* He therefore tasked Officer B to take up position across the road from the Vodafone store, covering the front right corner of the scene. Officer A took up position behind a parked car, across the road, some 34 metres from the front door of the store, and covering the front left corner of the scene.
186. Officer A initially set up the bi-pod on his rifle so that he had a stable firing platform across the bonnet of the parked car. However, this left him exposed so he removed the bi-pod and used his left hand to support his firearm. He used this support method when firing the shot.

Officer A said that he picked that position because it provided *“good cover for a start, and from there I was happy that I could see into the shop and where the others were, triangulate the scene.”* He was also mindful that he may need to move his position, and thought that he could use the cars that were parked nearby as shields, should the need arise.

FINDING

The position used by Officer A was tactically sound in the circumstances.

Was Officer A justified in shooting Lee Mettam?

187. For relevant law and policy refer to paragraphs 138-153.
188. The Authority has considered whether the force used by Officer A was justified under sections 39 and 62 of the Crimes Act 1961 and, if that force was not justified under those provisions, whether the force was nevertheless lawfully justified under section 48 of the Crimes Act 1961.
189. Section 39 gives the Police power to use force in certain circumstances. Section 62 provides that Police are criminally responsible for any excessive use of force.
190. Officer A would be justified under section 48 in using force so long as:
- The force he used was in defence of himself or another; and
 - The level of force was reasonable *in the circumstances as he believed them to be* (Authority's italics).
191. The starting point for consideration of self-defence is to assess what Officer A believed the circumstances to be from his subjective point of view at the time he shot Ms Mettam. The second matter to be considered is whether, bearing in mind Officer A's belief about what was happening, he was acting in self-defence or in the defence of another, again to be considered from his point of view. The third step is to ask whether, given Officer A's belief, the force he used was reasonable. In other words, whether the degree of force was proportionate to the level of threat as Officer A perceived it. The essential balancing requirement is for both the subjective and objective elements of the test to be assessed in light of the circumstances as the person responding to the threat saw them.
192. The General Instructions reflect and reinforce the Crimes Act requirements relating to use of force (see paragraphs 141-143).

What were the circumstances as Officer A believed them to be at the time he shot Lee Mettam?

193. At the time Officer A, fired he believed the circumstances were as follows:
- there was female offender in the Vodafone shop armed with a high powered rifle;

- there was a hostage involved, and the offender had been pointing the gun at the hostage;
- the situation had been ongoing for approximately 30 minutes;
- there were armed AOS officers and general duties Police at the scene manning the outer and inner cordons;
- the offender had, about five minutes previously, briefly come out of the shop with the firearm and been voice appealed and ignored that voice appeal;
- there were members of the public within the outer cordon, i.e. inside nearby shops;
- he had turned his mind to and was conscious of the directions in General Instruction F061 – fire orders;
- he had not had any previous dealings with the offender or the hostage;
- he had an unobstructed view of the front of the shop, the offender and the hostage;
- he had seen what looked like erratic behaviour from the offender – pacing, gun waving and gun pointing – and he believed that the offender was a threat to the hostage;
- from the manner in which the offender was holding the firearm, he believed she had used a rifle previously;
- Officer B had advised him of a bad glare he was getting off the Vodafone window from the sun, distorting his view into the shop;
- the offender and the hostage were the only two people he had seen in the shop;
- when the offender came out of the shop, she was holding the rifle butt to her shoulder and had her right hand around the butt in the grip area and her left hand supporting the front barrel – the firearm was, at that stage, pointing towards the ground;
- the offender had been voice appealed by him and again ignored the appeal;
- the offender brought the rifle up into firing position, initially pointing it towards Officers B, C and D;
- he thought that the offender was going to shoot someone;

- the offender then swung her rifle, still in the aim position, towards him as he continued to voice appeal her;
- he could not see if the offender's finger was actually on the trigger, but from the way she was holding the grip of the butt of the rifle, he knew that her trigger finger was either on or very close to the trigger;
- although he was positioned behind a car, his helmet and rifle were visible to the offender;
- the hostage was not behind the offender and he could not see the hostage in his sight picture;
- he had considered and discounted other tactical options.

194. Officer A then fired one shot.

At the time he fired the shot did Officer A believe he was acting in self defence?

195. When interviewed Officer A said:

"At the time I fired at the offender to incapacitate her as I feared that she was going to shoot me with the rifle, as she was non compliant and I thought that she was going to kill me or hurt me very badly. I was constantly thinking of Section 48 of the Crimes Act 1961 throughout this time as it is a major consideration in what we do when we deploy."

Was the degree of force used by Officer A proportionate to the level of threat perceived by him?

196. When asked by the Authority what his plan was if Lee Mettam was to come out of the shop with the firearm, Officer A replied: "[t]o call on her to surrender."

197. When Lee Mettam did come out on the second occasion, she was immediately called on to put the gun down by Officers A, B and D.

198. Officer A said that as soon as he voice appealed Lee Mettam she swung her rifle, in aim position, to point at him. He also said that when she did so, he feared that she would fire the rifle and kill or seriously injure him.

199. Officer A had consciously considered and discounted other tactical options (see paragraphs 92 and 217).

200. Officer A's knowledge of the immediately preceding events is relevant also to assessing the reasonableness of his response (see paragraph 193)

201. At the time Officer A shot at Lee Mettam, he believed that he was about to be shot at by her.
202. The Authority is satisfied that in the circumstances as he believed them to be (and as they were), Officer A could not feasibly have used any other defensive means given the immediacy of the situation with which he was met. The use of his firearm, in the circumstances, was not excessive.

FINDING

The evidence supports the conclusion that Officer A was lawfully justified (under sections 39 and 48 of the Crimes Act) in using lethal force to defend himself from Ms Mettam, in the circumstances as he perceived them to be. Further, the nature of the force he used was not excessive in the circumstances.

Why did other officers not shoot?

203. Officers B and D had the same information as Officer A about Lee Mettam, the hostage and the developing situation. Lee Mettam initially pointed the rifle at them and there is therefore a question as to why they or other officers did not shoot.

Officer B

204. Officer B said that as soon as Lee Mettam stepped out of the door he started to voice appeal her (see paragraph 99).
205. Officer B was in a standing position with his rifle raised, but with the barrel slightly lowered. He said that because he was yelling at her, he could not keep a steady aim on her (see paragraph 100)
206. He said that when the shot was fired he was preparing to fire himself, as he feared Lee Mettam would shoot him. He had her in the sight picture of his rifle scope when he heard the shot (see paragraph 100).

Officer D

207. Officer D is a member of the AOS, but did not have his squad equipment. He was armed with a Glock pistol and was positioned just inside the front doorway of the same shop as Officer B.
208. Officer D said he had set his sight on Lee Mettam and was confident that the hostage was to his right and out of the line of fire. He said that he challenged Ms Mettam by saying “*put the weapon down, put the weapon down*” and could hear another officer challenging her similarly (see paragraph 102).

Officer K

209. Officer K, a general duties officer, was positioned behind a parked vehicle armed with a Bushmaster rifle. When Lee Mettam came out of the store he had a clear view of her and the doorway of the store.
210. Officer K said that when Lee Mettam came to the doorway “[s]he looked to me like she was going to fire a shot. It was the way that she walked out to the front of the shop like she had real purpose.”
211. He said that at this stage he had real concerns for other Police officers in the line of fire as well as civilians still in adjacent shops and buildings across the road.
212. Officer K took aim at Lee Mettam and saw her begin to raise her firearm to an aim position. As he was preparing to fire he heard a shot and thought that she had fired.
213. Officer K said: “I’ve have no doubt that she would have fired her weapon had she not been shot first.”
214. It is clear that Officers B and D feared for their lives when Lee Mettam pointed her gun at them and were preparing to shoot. Officer K was also preparing to shoot.
215. When Lee Mettam raised her firearm into the firing position and pointed it at Officers B and D, she posed an immediate threat to both of them. She posed the same level of threat when she pointed her firearm at Officer A.
216. The time between Lee Mettam raising her firearm and Officer A firing was a matter of seconds.

FINDINGS

Of the four officers who had decided that it was necessary to shoot Lee Mettam and were about to do so, Officer A was simply the first to fire.

OTHER TACTICAL OPTIONS

Were other tactical options available and considered?

217. Officer A said that at the time Lee Mettam aimed her firearm at him he thought it was a high powered rifle. He had already tried voice appeal, and had considered and discarded the possibility of using other options which would have required him to break cover. He said:

"It was very apparent from the assessment I made of the situation that these options would be of no use in dealing with the offender as I would have had to expose myself and get closer to the offender to effectively use them."

218. Other options that are routinely considered by the Police when dealing with a violent offender are:
- Cordon and containment;
 - Retreat or delaying an arrest;
 - Police dogs;
 - Taser.
219. Inner and outer cordons had been set up and were being maintained by Police. Because of Lee Mettam's confrontational stance, the fact that there was a hostage, and the fact that some members of the public were caught inside the cordons, a more positive approach than containment was necessary.
220. Police could not retreat. That would have left the hostage and the public at grave risk.
221. An AOS dog unit had been paged at the same time as the AOS. The dog unit had just arrived at one of the outer cordon posts at the time Ms Mettam was shot. Had the unit been in a suitably tactical position, using the dog was a possible option.
222. Tasers were not available to the Whangarei Police at the time. In any event, Tasers have an optimum operating distance of 2 to 5 metres and could not have been used.

FINDING

The only viable options open to Officer A were voice appeal, which he used, and his rifle. The other, discounted, options would have unjustifiably exposed Officer A to Ms Mettam and necessitated his getting even closer to her to effectively use them. In addition, they were not practicable given the very short timeframe involved.

COMMUNICATIONS, AND COMMAND AND CONTROL

Did the Police comply with all requirements in respect of communications, and command and control; if not, did any failings contribute to the outcome?

223. Protocols for the interaction between Communications Centres and field staff place the initial responsibility for command and control of incidents on Communications Centres.

A handover occurs when a “suitable member of Police in the District” is willing and able to take over as Incident Controller.

224. At 9.31am a senior field officer, who had recently arrived at the scene, radioed NorthComms and requested that he be assigned as ‘Incident Controller’. He asked NorthComms to ensure that AOS had been paged.
225. An ‘Incident Controller’ effectively takes command and control of the incident, with the Communications Centre moving to a supportive role. In this case the Incident Controller’s prime responsibility was to contain the suspect by establishing cordons, and to facilitate the actions of AOS, emergency response and general duties officers.

The paging of AOS

226. There was a 10-minute delay between the request to page AOS (9.27:06am) and the page being sent (9.37:43am).
227. During this period, the Incident Controller twice asked NorthComms to ensure AOS had been activated.
228. It is unclear why this delay occurred. The responsibility rests with the NorthComms Inspector.
229. There was a consequential delay in AOS personnel arriving at the scene.

Police radio

230. Two Police radio channels were operating during the incident – the general channel linking NorthComms, patrol vehicles and portable radios; and an encrypted channel, available to AOS only.
231. Once the AOS officers deployed forward, their communication was via the AOS radio only. They were not accessible to the Incident Controller or NorthComms.

Voice appeal plan

232. No voice appeal plan was formulated before engaging with Lee Mettam. This led to three officers shouting at her simultaneously, and probably was the reason for Ms Mettam swinging her firearm from Officer B to Officer A.
233. A voice appeal plan was desirable in this situation as it would have designated a specific AOS member to call out to the offender, leaving the others free to concentrate on her actions.
234. It was the responsibility of Officer A, as senior AOS member deployed, to form a voice appeal plan and to communicate this plan to the other officers at the scene.

Communications with Ambulance

235. As soon as the shot was fired, the Incident Controller radioed NorthComms and requested that an ambulance be sent to the SFP. He did not advise NorthComms that a shot had been fired.
236. NorthComms called the ambulance service but, not being aware that a shot had been fired, did not convey the urgency of the situation. An ambulance did not arrive at the scene for 25 minutes.
237. It was 10 minutes, and several follow-up calls from the SFP, before NorthComms was advised that a shot had been fired.
238. It is a standard operating procedure for the Communications Centre to arrange for an ambulance to be on stand-by near the scene in the early stages of an event of this nature. In this case the ambulance service had not been notified of the incident.
239. It was the responsibility of the Incident Controller to have the ambulance service advised, via NorthComms, that a shot had been fired and that a person had been injured. This was not properly conveyed for 15 minutes. The delay, and the confusion associated with it, was a direct consequence of the lack of a direct radio link between Officer J, the Incident Controller and NorthComms.

The actions of Officer J

240. After the shot was fired, Officer J elected to deploy with the Entry Team rather than at the SFP in a command and control role.
241. Officer J said that due to the small size of the Northland AOS he normally deployed as a roving commander – i.e. he would deploy forward, away from the SFP, and command from the field instead of staying at the SFP.
242. His deployment as part of the Entry Team meant that there was no radio communication between the Incident Controller and AOS after the shooting had taken place.

FINDINGS

The NorthComms Inspector did not have the AOS paged in a timely manner.

Officer A, as senior AOS member, should have formulated a voice appeal plan and communicated it to the other officers deployed forward with him.

The NorthComms Inspector should have arranged for an ambulance to be on stand-by at the beginning of this incident.

The Incident Controller should have advised NorthComms that a shot had been fired.

The 15-minute delay in doing so was a direct consequence of there being no radio communication between the forward AOS personnel, the Incident Controller and NorthComms.

It was tactically preferable for Officer J to have remained at the SFP in a command position, rather than deploying with the Entry Team.

The delay in paging AOS, the absence of a voice appeal plan, and the delay in the arrival of the ambulance, did not materially influence the outcome.

POST SHOOTING ASSISTANCE

Was all reasonable assistance given to Lee Mettam after she was shot?

243. The AOS Entry Team had arrived at the SFP just before the shooting and was deployed immediately from the SFP to the Vodafone shop. It took approximately two minutes for the team to enter the store, the slight delay being caused by there being no response to the team's commands. Team members immediately commenced CPR on Ms Mettam and continued until relieved by ambulance staff.

FINDING

Police officers provided appropriate assistance to Lee Mettam.



Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

244. Officer A was justified in shooting Ms Mettam in light of the immediate threat of death or grievous bodily harm to himself and others, and he could not have reasonably protected himself or others in a less violent manner in the circumstances. The force he used in those circumstances was not excessive.
245. Although there were some minor breaches of Police procedures these did not amount to misconduct or neglect of duty on the part of any Police officer involved and did not affect the outcome.
246. The Authority commends the manner in which the Incident Controller took command and control of the incident.

Recommendation

INDEPENDENT POLICE CONDUCT AUTHORITY

247. Recommendation:

- i) In incidents where the AOS radio channel is being used, the Incident Controller should have access to this channel.



Hon Justice L P Goddard

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

15 April 2010

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 chaired by a High Court Judge and has two other members.

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 has two investigating teams, made up of highly experienced investigators who have worked in a range of law enforcement 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;
- 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 can make findings and recommendations about Police conduct.



IPCA

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