



IPCA

Independent Police
Conduct Authority

Whaia te pono, kia puawai ko te tika

Police shooting of Caleb Dean Henry

December 2014

Contents

- Introduction 3**
- Background 5**
- The Authority’s Investigation 17**
- The Authority’s Findings..... 18**
- Conclusions 25**
- Applicable Laws and Policies 27**



Introduction

1. At about 7.30pm on 7 July 2013, 20 year old Caleb Dean Henry forced his way into a house near Opotiki and attacked the occupants before fleeing with their vehicle, a high-powered rifle and ammunition.
2. Later that evening Police located Mr Henry driving the stolen vehicle near Cambridge. Police followed and pursued Mr Henry for four hours until the pursuit ended on Auckland's North Shore.
3. At about 2.13am on 8 July 2013, Mr Henry was shot and killed by officers from the Waikato Armed Offenders Squad. Mr Henry's identity was not known to Police until after his death.
4. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

Index of officers

Communications Centre Staff		Roles/Comment
NorthComms Inspector	Shift	NorthComms incident controller during the pursuit of Mr Henry.
Field Staff		
AOS Officer A		Front passenger, fourth AOS pursuit car.
AOS Officer B		Driver, lead AOS pursuit car.
AOS Officer C		Rear left passenger, fourth AOS pursuit car.
AOS Officer D		Driver, fourth AOS pursuit car.
AOS Officer E		Rear left passenger, second AOS pursuit car.
AOS Officer F		Rear right passenger, second AOS pursuit car.
AOS Forward Commander		AOS Forward Commander, seated in the second AOS pursuit car.
AOS Officer H		Driver, second AOS pursuit car.
AOS Officer I		Seated in the lead AOS pursuit car.
AOS Officer J		Driver, third AOS pursuit car.
GDB Officer O		Auckland Metro Shift Supervisor who led the first deployment of road spikes, near Bombay.
GDB Officer P		Papakura acting sergeant who assisted at the first road spikes deployment site.
GDB Officer Q		Papakura constable who assisted at the first road spikes deployment site.
GDB Officer R		Papakura constable who assisted at the first road spikes deployment site.
GDB Officer S		Auckland general duties dog handler who assisted at the first road spikes deployment site.
GDB Officer T		Papakura sergeant who deployed road spikes at the second site, near Ramarama.

Background

Home invasion and Police involvement until the pursuit

1. At about 7.30pm on Sunday 7 July 2013, Mr Henry carried out a violent home invasion of a house near Opotiki, during which the two occupants sustained knife injuries. After stealing the couple's Ford Ranger Ute, hunting rifle and ammunition, Mr Henry drove from the address. The couple fled to a neighbour's house and called the Police.
2. Around 9pm the Police Northern Communications Centre (NorthComms) broadcast an alert on the Bay of Plenty Police radio channel detailing the home invasion, including a description of the Ford, the rifle and the time delay.
3. At about 10.30pm, Mr Henry travelled past a Tauranga Police officer on State Highway (SH) 29, on the eastern side of the Kaimai Range.
4. The Tauranga officer advised NorthComms that he was following the Ford Ranger from a distance. He was directed by the NorthComms Shift Inspector to keep following the vehicle from a safe distance while an armed response was coordinated.
5. From this point, the Shift Inspector assumed the role of incident controller and coordinated the Police response.
6. Mr Henry accelerated to 160kph after the intersection of SH29 and Rapurapu Road, on the eastern side of the Kaimai Range. The Tauranga officer lost sight of the Ford and stopped following Mr Henry.
7. As a result of this first sighting of Mr Henry, armed Bay of Plenty and Waikato General Duties Branch (GDB) Police units deployed to the area around SH28 and SH29. These units established cordons and conducted mobile patrols in an effort to find Mr Henry. At about the same time, the NorthComms incident controller briefed the commander of the Waikato Armed Offenders Squad (AOS) about the incident.
8. From this point on the NorthComms incident controller and AOS Commander regularly discussed via cell phone their tactics and strategy for stopping Mr Henry (see from paragraph 23 for further detail).
9. Around 11.40pm, a second Tauranga Police officer located Mr Henry travelling south on SH28, toward Tapapa. The officer advised NorthComms that he was following the Ford, travelling at 90kph. This officer was assisted by officers in two other Tauranga patrol cars and a Hamilton patrol car. They all followed Mr Henry south to SH5 and onto SH1. Shortly before SH1, near Tirau, officers in three further Hamilton Police patrol cars joined the Police officers already following Mr Henry.

10. Officers in seven Police patrol cars were now following the Ford, with the nearest Police car approximately 50 metres behind. The NorthComms incident controller instructed these officers to engage the Ford driver only if his actions made an armed vehicle stop necessary. In accordance with this instruction, the officers following Mr Henry did not activate the emergency lights and sirens on their patrol cars.
11. At 11.46pm Mr Henry made a 111 call to Police on his cell phone. Mr Henry told the Police call-taker, in relation to the officers behind him, *"Tell them if they get a chance to shoot me to fucking shoot me bro, because I'm going to take as much of you cunts with me as I can."*
12. Mr Henry also told the call-taker that: he had stolen the Ford and rifle; he wanted to travel to Kerikeri to speak to his father one last time; he was with another person; and they both had military experience. In response to questions from the call-taker, Mr Henry said that he was happy to stay speaking to Police on the phone and would try to keep his speed down.
13. Mr Henry was then transferred to Police Negotiating Team (PNT) members based in Hamilton and they spoke directly to him. He repeated that he had military experience and his threats to kill officers if Police attempted to stop him. A short time after this the battery in Mr Henry's cell phone ran out of charge. The information provided by Mr Henry was subsequently communicated to all Police units involved in the incident.
14. Following Mr Henry's phone call, at about midnight, the NorthComms incident controller:
 - organised for the Police Helicopter (Eagle) to deploy to the incident;
 - ensured all Police officers were armed and performed ongoing risk assessments of the threat posed by Mr Henry to Police and the public;
 - organised for the Rotorua and Waikato AOS squads to be mobilised, in response to the threat that Mr Henry was believed to pose;
 - coordinated with the AOS Commander, and arranged for the Waikato AOS to take the lead following Mr Henry and attempt a non-compliant vehicle stop (see paragraph 148); and
 - ensured that Police units involved in the incident were advised of the threats made by Mr Henry against Police and provided with updated information.
15. The NorthComms incident controller also gave instructions designed to create a clear and controlled corridor for Police and Mr Henry on SH1, and:
 - organised for Auckland Police units to deploy at key intersections and block motorway on and off-ramps;
 - tasked Police units ahead of Mr Henry to close petrol stations adjoining the highway;

- arranged for the traffic lights ahead of Mr Henry to be phased green; and
 - requested that the Joint Traffic Operations Centre (JTOC), which manages the Auckland motorway network, set up road signage to warn motorists of the incident.
16. Waikato AOS officers had been paged shortly before midnight. This unit consisted of nine AOS officers including an AOS-qualified dog handler.
 17. Upon their arrival at the AOS squad room in Hamilton, the officers were briefed that the unidentified individual being followed by Police toward Hamilton had stolen the Ford and rifle during a burglary in Opotiki. The AOS Forward Commander organised the officers into an AOS non-compliant vehicle stop formation. The non-compliant vehicle stop formation and manoeuvre are explained in greater detail below (see paragraphs 24, 29 and 148).
 18. The AOS Forward Commander also read out to the AOS officers the Police F061 Fire Orders. These are a reminder to officers of their personal responsibilities relating to the use of firearms (see paragraphs 156–159). The AOS officers were given further information about Mr Henry, including his claim to having had military experience and his threats to kill Police, and advised that they would begin pursuing him once he entered Hamilton.
 19. The AOS officers then travelled in marked Police patrol cars to the south side of Hamilton to wait for Mr Henry at their designated intercept point just south of Anne Brook Road.
 20. At about this time, the NorthComms incident controller advised the Waikato District Command Centre (DCC) that he would not at that stage call out the Auckland AOS, but would do so if asked by the Waikato AOS Commander. At 12.23am, as the Police GDB units followed Mr Henry toward Hamilton, the NorthComms incident controller broadcast over the Police radio the Police F061 Fire Orders.
 21. Mr Henry maintained a speed of about 100kph as he travelled towards Hamilton. Officers later described that he drove well in heavy rain and there was no other traffic on the highway.
 22. The GDB officers following Mr Henry had still not activated the lights and sirens on their patrol cars. As Mr Henry approached Hamilton, the NorthComms incident controller again broadcast over the Police radio the information known about Mr Henry, and repeated that officers were to follow the Ford until AOS officers could deploy and co-ordinate an armed vehicle stop.
 23. Mr Henry dropped a note from his vehicle as he passed Pickering Road on SH1, south of Hamilton. The Police unit that collected this note thought it said, *“Call Dad. I want new ones.”* Following the incident Police determined that the note actually said, *“Cell died. I want a new one.”* Mr Henry dropped a second note after travelling through Tamahere which said, *“When you have one lead car put your lights on.”* This note led Police to believe that Mr Henry had a Police scanner.

24. At 12.29am, when Mr Henry entered Hamilton, and as pre-planned by the NorthComms incident controller and Waikato AOS Commander, four Police vehicles crewed by AOS officers began following him. The lead vehicle contained two AOS officers and the second vehicle contained four AOS officers, including the AOS forward Commander. AOS Officer J, an AOS dog handler, was in the third vehicle. Three AOS officers were in the fourth car. PNT members and the AOS Commander followed these units at a safe distance in separate Police vehicles.
25. The GDB officers previously following Mr Henry backed off. They followed behind the AOS vehicles until Mr Henry left Hamilton.

Pursuit of Mr Henry

26. At about 12.30am, AOS Officer B, driver of the lead AOS vehicle, pulled in 20 metres behind Mr Henry and activated his patrol car's warning lights and sirens to signal Mr Henry to stop. AOS Officer H, driving the second AOS vehicle, activated the warning lights on his patrol vehicle. Mr Henry failed to stop. At 12.31am the AOS officers commenced pursuit of Mr Henry.
27. AOS Officer J, driving the third AOS vehicle, was tasked by the AOS Forward Commander to provide pursuit commentary, so that the AOS officers in the first and second vehicle could focus on other tasks, including the planned non-compliant vehicle stop. AOS Officer J advised NorthComms that the incident had become a *"fleeing driver situation."* NorthComms provided the pursuit warning required by Police policy, and this was acknowledged by AOS Officer J and AOS Officer B. Following this AOS Officer J transmitted, *"all lights are activated and lead vehicles have sirens on."*
28. Due to the belief that Mr Henry had a Police radio scanner, the NorthComms incident controller directed AOS Officer J to only provide information about Mr Henry's speed, manner of driving and direction during the pursuit.
29. Mr Henry continued through Hamilton along Cobham Drive to Tristram Street. Around this point the AOS Forward Commander instructed the drivers of the two lead AOS vehicles to conduct a non-compliant vehicle stop. This manoeuvre involves the lead AOS pursuit vehicle accelerating to block the path of the fleeing vehicle. The second AOS pursuit vehicle is then positioned so that the fleeing driver cannot reverse or drive around the lead AOS vehicle.
30. At the London Street roundabout AOS Officer B accelerated to stop in front of the Ford. Mr Henry saw this and swerved into and collided with the left side of the AOS vehicle. AOS Officer B was forced to veer right before slowing down behind Mr Henry.
31. Following this, the AOS Commander decided that attempting a second non-compliant vehicle stop would involve too high a risk to officers, and decided to rely on road spikes as the primary tactic to stop Mr Henry.
32. The AOS Commander then organised with the NorthComms incident controller and GDB Officer O, the Auckland Metro Shift supervisor, for Auckland GDB Police units to establish a cordon with road spikes at a point on SH1, north of Bombay.

33. At 12.38am Mr Henry drove out of Hamilton on Te Rapa Road. Near Vardon Avenue he fired a single shot from his rifle at the pursuing AOS vehicles. There was no other traffic on the road at this time. In response, the AOS Forward Commander instructed the lead AOS car to back off. AOS Officer B dropped back to 80–100 metres behind the Ford.
34. The pursuit continued north to Auckland, travelling through Ngaruawahia and Huntly. During this part of the pursuit Mr Henry's manner of driving was controlled. He indicated to change lanes, dipped his headlights for oncoming cars and travelled at or below the speed limit in dry road conditions with little other traffic.
35. Around 1am, NorthComms advised the pursuing AOS officers that Auckland Police were intending to deploy road spikes at locations on the Southern Motorway, and had set up road spikes about one kilometre after Bombay.
36. Shortly after this the Police helicopter (Eagle) arrived overhead and as directed by NorthComms took over the responsibility of providing the pursuit commentary.
37. Before Mr Henry reached Bombay the NorthComms incident controller reconsidered whether to mobilise the Auckland AOS, but thought that they would not add further value and that the pursuing AOS officers could manage the situation. In an interview with the Authority he said that he thought that Rotorua AOS officers were also in pursuit and, *"I could not see what other value a third AOS team were going to provide."*
38. In relation to this, the Authority spoke to the AOS Commander on duty at the time of the incident. He said that the Auckland AOS may have been able to plan an interception on the motorway. But, he said, this sort of situation was unpredictable and in a pursuit, *"simply adding more vehicles is undesirable and road blocks are also problematic."*
39. At about 1.25am, as Mr Henry approached Bombay, NorthComms advised all Police units that after Bombay the incident would switch from the Hamilton Police radio channel to the Auckland channel.
40. The Waikato Police radio network is analogue, and Hamilton Police units only operate analogue radios. The Auckland Police radio networks are digital. Consequently, once the pursuit entered the Auckland area the AOS officers pursuing Mr Henry, and operating analogue radios, lost direct communication with NorthComms. They were reliant on Eagle or the AOS Commander, in communication with the NorthComms incident controller via cell phone, to relay radio communications from NorthComms and the Auckland Police units ahead of Mr Henry.
41. The NorthComms incident controller had earlier anticipated this radio difficulty and had sought to link the analogue and digital channels, but found that this could not be done. He also arranged for two Auckland Police cars fitted with digital radios to be available at Bombay for the AOS officers to use. Eagle operated both channels, and consequently acted as the conduit between the Hamilton and Auckland channels. Eagle was also able to communicate with the AOS personnel on the secure AOS radio.

First road spikes location: Bombay

42. The first road spikes site was located at the base of the Bombay Hills, about three kilometres north of the Bombay on-ramp. It had been set up by Auckland GDB officers, including GDB Officer O, Officer P, an acting Sergeant, and two constables, Officers Q and R.
43. The NorthComms incident controller had earlier instructed GDB Officer O to deploy road spikes on the motorway before any off-ramps, to prevent Mr Henry exiting the motorway. GDB Officer O had then tasked GDB Officer P, an acting Sergeant with knowledge of the area, to locate a suitable spot at the narrowest point on the motorway. He also arranged for attenuator trucks to be driven to the area. He planned to position the attenuator trucks in a V-shape across the motorway to attempt to funnel Mr Henry onto road spikes deployed between the trucks. He also planned to use the trucks as cover for the officers.
44. GDB Officer O then met with and briefed GDB Officers P, Q and R at the intersection of SH1 and SH2, near Pokeno, around 12.50am. They were also joined by GDB Officer S, a dog handler. After discussing possible deployment locations and relevant risk factors with the officers, GDB Officer O decided to deploy road spikes at a location suggested by GDB Officer P, at the southern end of the Ramarama straight, north of Bombay. GDB Officer O said that he chose the location because it was before any off-ramps which Mr Henry could use to exit the motorway. GDB Officer P said that he suggested the location because it offered the highest degree of public safety.
45. The officers travelled to the location and arrived at about 1.20am, around 10 minutes before Mr Henry was expected to arrive. The location consists of two sealed northbound lanes. High tensile wire and a grass median strip separate the northbound from the southbound lanes (there are no solid median barriers in this section of the motorway). An emergency stopping lane borders the northbound lanes.
46. When the attenuator trucks arrived GDB Officer O did not believe that the officers had sufficient time before Mr Henry arrived to park the trucks in position and get the drivers to a safe location. He waved the trucks through and switched to his secondary plan of using patrol cars instead of the attenuator trucks.
47. The officers placed two marked patrol cars, with red and blue warning lights activated, on either side of the northbound lanes in a V-shape formation. This was in an attempt to funnel Mr Henry onto road spikes deployed between the patrol vehicles. A set of road spikes was also placed on the emergency stopping lane.
48. After they had set up the Police cars the officers practised deploying and retrieving the road spikes. Due to the lack of other cover at the location, GDB Officer O instructed the officers to take cover behind the engine blocks of the Police cars when the Ford approached. He also telephoned the AOS Commander to inform him of the deployment plan and layout.

49. At about 1.30am Eagle advised the officers at the site, and the pursuing AOS officers, that Mr Henry was about 1.5 kilometres from the road spikes deployment site. Eagle then advised when Mr Henry was 500 metres and then about 200–300 metres from the site. GDB Officer O responded *“spikes are deployed and we’re in position.”*
50. GDB Officers O, P and R took cover behind the marked patrol vehicles positioned across the northbound lanes. GDB Officers Q and S climbed over the barrier into the grass median area.
51. When he reached the site Mr Henry slowed and swerved left across the emergency stopping lane and partially onto the grass berm adjoining the motorway, where the left tyres of his Ford hit a set of road spikes. Mr Henry returned to the motorway and accelerated to about 100kph. The Ford began to tilt as the two left tyres deflated. When this occurred AOS Officer A advised over the radio, *“he’s been spiked on the inside, spiked on the inside.”*
52. During the course of its investigation the Authority has viewed video footage of this aspect of the incident, recorded by the Eagle camera. The footage shows the Ford slowing down as it approached the site, and then travelling along the grass berm. It shows that when Mr Henry drove to the left of the site, the officers taking cover behind the Police cars were exposed to the right side of Mr Henry’s vehicle and his line of fire.
53. The AOS officers in the four pursuit vehicles stopped for the road spikes to be retracted. After they continued the pursuit, the marked patrol vehicle carrying the AOS Commander, following the pursuit at a distance, ran over road spikes that had been caught in Mr Henry’s tyres and then come free. The AOS Commander switched to a marked patrol car, connected to the Auckland digital radio network, as a result of which NorthComms regained direct contact with the AOS Commander.
54. Following this, the NorthComms incident controller authorised any Police officer to deploy road spikes if they were in a position to do so safely, and after they had completed an assessment of the risk to officer and public safety.
55. The NorthComms incident controller then specifically authorised GDB Officer T, a Papakura GDB officer, to deploy road spikes at the Ramarama overbridge, about three kilometres after the first cordon. GDB Officer T had originally travelled to this location to set up road spikes on the motorway off-ramp.
56. NorthComms subsequently advised Eagle on the Auckland digital radio network that *“we’ve got a second lot of spikes at Ramarama.”* Eagle contacted GDB Officer T to confirm his location, and then broadcast on the Waikato analogue radio network, *“Yeah 1.1 from Eagle supposedly there’s another set of spikes at Ramarama. We’re going to advise him to try and get them across the motorway without any Police vehicle around so he doesn’t know.”* This message was not acknowledged by any of the AOS units.

Second road spikes location: Ramarama

57. As Mr Henry approached the overbridge, GDB Officer T confirmed to NorthComms that *“spikes [are] ready to go Comms.”* GDB Officer T then extended the road spikes across the inside lane of the motorway and took cover behind a concrete bridge pillar in the median area.
58. After this Eagle advised that the Ford was *“crossing underneath [the] Ararimu Road off-ramp coming on to the Ramarama straight.”*
59. Mr Henry avoided the road spikes by driving on the outer and emergency motorway lanes. Before GDB Officer T could retract the road spikes, three Police vehicles, including the lead and third AOS cars in the pursuit, drove over them. These AOS officers were not aware of the road spikes deployment. AOS Officer B, driving the lead pursuit vehicle, later recorded, *“As we travelled under the next overbridge I sore [sic] a set of road spikes deployed completely across the lane in front of me.”* He did not have time to avoid the road spikes.
60. AOS Officer J, in the third AOS pursuit vehicle, was also unaware of the road spikes deployment at Ramarama. He thought his vehicle had hit a portion of road spikes from the Bombay location, which had been picked up and discarded by the Ford’s tyres.
61. As a result of hitting the road spikes, the AOS officers in the lead car switched into a Counties Manukau GDB patrol car. AOS Officer J got into a patrol car driven by GDB Officer S. The second AOS car temporarily took over as lead pursuit vehicle before the AOS Forward Commander instructed AOS Officer D, driving the fourth AOS car, to assume the lead vehicle position.
62. All Waikato AOS personnel were now in Auckland Police cars, operating digital radios, except AOS Officers A, C and D.

Continuation of the pursuit

63. Mr Henry continued north on SH1. He passed Auckland GDB units that had blocked motorway off-ramps by placing patrol cars and road spikes across the exit lanes, as part of the Police strategy of keeping him on the motorway. Near Takanini, AOS Officer A advised NorthComms that the Ford was travelling at about 90–100kph and that the driver was having some difficulty driving with the deflated tyres.
64. During this stage of the pursuit the NorthComms incident controller broadcast a general alert reminding officers that Police tactics were to keep the Ford on the motorway. Officers were instructed to, *“Stay out of sight of this vehicle or at least have cover. I don’t want you wearing reflectorised jackets.”* The NorthComms incident controller rebroadcast the information known about Mr Henry when he travelled through Manukau.
65. After the pursuit had passed the Highbrook overbridge Eagle advised the pursuing AOS officers, via the AOS Commander travelling in an Auckland GDB patrol car, that Auckland GDB officers were establishing a third road spikes cordon on the motorway past the Victoria Park Tunnel.

66. During this stage of the pursuit, AOS officers also witnessed a number of acts by Mr Henry that increased the risk they perceived he posed, including:
- near Takanini, travelling at about 100kph, Mr Henry drove alongside a car and pointed his rifle at the driver until the driver slowed down and pulled back;
 - when the pursuit passed the Highbrook motorway interchange, pursuing AOS officers reported that Mr Henry fired one shot at the lead AOS pursuit vehicle. The AOS officers felt their vehicle shudder when Mr Henry fired (although a subsequent inspection revealed no damage to this car); and
 - Eagle advised that Mr Henry fired another shot while passing below the Ellerslie-Panmure overbridge. AOS Officers B and I, in the lead AOS vehicle, saw this shot and considered it was possible that Mr Henry had fired at a marked patrol vehicle on one of the motorway off-ramps.
67. As the pursuit passed Mountain Road in Newmarket the NorthComms incident controller informed the AOS Commander that road spikes had been deployed 100 metres from the Victoria Park Tunnel on the bridge side, and asked Eagle to forewarn the pursuing AOS officers when they got there.

Third road spikes location: Victoria Park Tunnel, Auckland

68. At 2.03am, Mr Henry approached the third road spikes site, established by the Auckland Shift Supervisor, and two Auckland GDB constables, on the Harbour side of the Victoria Park Tunnel. The Auckland Shift Supervisor, a Senior Sergeant, considered this to be the most effective location to deploy road spikes. He later recorded in his Police job sheet that he had considered this location perfect from a safety perspective because a solid concrete barrier that bordered the northbound lanes of the motorway provided cover for the deploying officers.
69. Video footage of this stage of the incident, taken from the Eagle camera and JTOC surveillance system, show that at the site the officers parked a patrol vehicle on the Beaumont Street on-ramp, and another at the end of the concrete barrier which divided the on-ramp and inside motorway lane. They deployed road spikes across each of the three motorway lanes.
70. As Mr Henry approached the tunnel Eagle transmitted that he was *“on the downhill stretch, he’ll be entering the tunnel in ten seconds”*, and shortly after this that *“the vehicle has entered the Victoria Park Tunnel.”* When they heard that the Ford was entering the tunnel the officers at the site extended the road spikes across the road.
71. The officers then heard a gunshot, and they took cover behind the solid concrete roadside barrier. They saw the Ford strike the road spikes. After waiting a moment the officers stepped onto the road and attempted to warn the pursuing AOS vehicles of the road spikes.
72. Eagle advised that the Ford had exited the tunnel and had subsequently travelled over the road spikes.

73. AOS Officer B, driving the lead AOS vehicle, had considered that the road spikes would be removed before he and the other pursuing AOS vehicles reached the cordon. He did not see the officers waving and drove over the deployed road spikes. He and AOS officer I then switched to an Auckland marked patrol vehicle already at the scene. While the vehicle change occurred, the second AOS vehicle, driven by AOS Officer D and also containing AOS Officers A and C, again took over the role of lead pursuit vehicle.
74. The front right tyre on Mr Henry's vehicle was deflated by the road spikes at this site. As he crossed the Harbour Bridge AOS officers reported that the tyres on the Ford had shredded and the vehicle was running on its rims. The officers also observed, for a second time, Mr Henry drive alongside a car and point his rifle at the occupants until the driver slowed down.
75. About this time the NorthComms incident controller discussed with the AOS Commander which additional AOS unit to call out, Auckland or Northland. They decided to call out the Northland AOS if Mr Henry continued beyond Auckland.
76. After the Harbour Bridge, the pursuing AOS officers saw the Ford begin to swerve and the wheels spark. The AOS Commander confirmed via the AOS radio that when the Ford stopped, AOS tactics were to stop short rather than cut off the Ford.
77. At 2.10am, shortly after the Sunset Road overbridge, Mr Henry came to a stop against a concrete barrier on SH1.

Vehicle stop and shooting of Mr Henry

78. During the pursuit, the AOS Forward Commander had instructed the AOS officers to use a 'cordon, contain and appeal' strategy on Mr Henry when he stopped.
79. The officers in the lead AOS vehicle had also discussed between themselves various scenarios for when Mr Henry stopped. They had agreed that AOS Officer C, sitting in the left rear passenger seat, would have the primary role of providing 'cover' with his M4 rifle so that AOS Officer A, in the front passenger seat, and AOS Officer D, the driver, could safely exit the patrol car. AOS Officer A would also deploy a stun grenade at Mr Henry's vehicle before he got out. AOS Officers A and C would reverse their roles if Mr Henry stopped on the right hand side of the road.
80. When Mr Henry stopped, AOS Officer D stopped about 10 metres behind and to the right of the Ford. He parked the patrol car at a 45-degree angle across the motorway, so that its left side was facing the Ford. The driver of the second AOS car stopped with his vehicle's nose to the rear of the lead AOS car, and behind this vehicle stopped the driver of the third AOS car.

81. AOS Officer D, driving the lead patrol car, said that when he brought the car to a stop behind the Ford he saw the barrel of a rifle protruding from the driver's side window of the Ford, pointed across the highway but not at the AOS vehicle, and then saw a muzzle flash. AOS Officer A said that he threw a stun grenade toward the Ford when the patrol had come to a stop. He said that his stun grenade was prepped to go off twice, and that he subsequently heard gun shots as it went off.
82. AOS Officer C said that he heard the rifle fire and saw a muzzle flash when the patrol car was coming to a stop. Still seated in the left rear passenger seat of the patrol car, AOS Officer C aimed his M4 rifle at the Ford driver's headrest area and pulled the trigger, but his rifle's safety catch was still engaged. He disengaged the safety catch and saw a second muzzle flash. AOS Officer C then fired what he believed to be three rounds at the rear right driver's side of the Ford. In Police interview, he said that when he fired the third shot a stun grenade went off near the Ford. It was later determined that AOS Officer C fired four rounds.
83. In Police interview, AOS Officer C stated, *"I fired the rounds into where I believed the driver or the person who fired would be positioned, namely the head rest area."* In interview with the Authority, he stated that he had formed the opinion that *"there was a threat in the front right side of the vehicle"*, and *"I aimed the rounds where I thought the threats were coming from."*
84. AOS Officer C also told the Authority that he *"thought [Mr Henry] was trying to kill us. I shot to stop him."* He believed that Mr Henry was firing at the officers in the lead AOS car, and he *"took the force that [he] felt was appropriate in the circumstances to prevent the death or serious injury of the officers."* In his Police statement, AOS Officer C stated that when the second shot was fired from the Ford, he believed that the situation would only be resolved if Police returned fire and that at the time it was *"unsafe or impractical to do either a warning shot or a challenge."*
85. At almost the same time as AOS Officer C fired, AOS Officers A and D were stepping out of the patrol car, and the other AOS officers were getting out of the second and third AOS vehicles. As previously planned, they deployed stun grenades at Mr Henry as they exited their vehicles. AOS Officer C reengaged his rifle's safety switch and got out of the patrol car through the rear right passenger door, taking a position beside other AOS officers against the patrol car.
86. By this time AOS officers were voice appealing the driver to put his hands out the window and drop his weapon, informing him that they were armed Police. After about 15 seconds the officers saw that the rifle barrel was pointed up and out of the driver's side window, and that it was motionless. There was no movement in the Ford.
87. Unsure whether the driver had been incapacitated, the AOS Forward Commander, after seeking approval from the AOS Commander, ordered the deployment of CS gas, commonly known as tear gas, at the Ford. AOS Officer F, standing behind the lead Police vehicle, fired three gas rounds from his shotgun, and AOS Officer D, standing to the left, fired two CS gas rounds from a 40mm gas launcher into the Ford.

88. Three AOS officers then approached the vehicle. The lead AOS officer grabbed the rifle, still sticking upwards out the driver's window, and threw it onto the road. Two of the officers opened the driver's door after calling out for Mr Henry to show his hands.
89. Mr Henry was unresponsive, and the AOS officers saw that he appeared to have been shot in the back of the head. They then placed Mr Henry on the road. AOS Officer J, a qualified nurse, began to apply first aid.
90. At 2.15am the AOS Forward Commander requested an ambulance attend the scene. AOS Officer J continued to provide first aid until an advanced paramedic arrived, followed by an ambulance.
91. Video footage examined by the Authority during its investigation confirms the officers' accounts of the incident. This footage was taken by the Eagle camera and JTOC motorway surveillance cameras.
92. The footage shows the Ford coming to a stop at the side of the road. Almost simultaneously there is a bright flash near the right rear tyre and a rifle can be seen pointing from the Ford driver's door window to the rear of the Ford and in the direction of the AOS vehicles. The rifle can be seen to recoil as it is fired toward the AOS vehicles.
93. The rifle is then retracted partly back into the vehicle before being pointed again in the direction of officers. It is aimed in this direction for about one second before it swings quickly away to the left, at the same time as a small burst occurs in the front windscreen of the Ford. It is unclear whether the rifle was fired. Three more flashes then occur to the rear and side of the Ford in succession.
94. The footage shows the AOS officers then standing behind the Police car nearest the Ford for a little over two minutes before three AOS officers approach Mr Henry.
95. Mr Henry died in hospital a short time later. The incident, from the time the Ford was seen in Tauranga until the shooting of Mr Henry, lasted about four hours. Mr Henry travelled a distance of approximately 232km across five Police districts.

Police involved

96. Police officers from four Districts were involved in this incident. Officers from the Waikato AOS conducted the pursuit and were involved in the shooting of Mr Henry.

The Authority's Investigation

THE AUTHORITY'S ROLE

97. Under 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, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
98. The Authority's role on the completion of an investigation is to determine whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable.

THE AUTHORITY'S INVESTIGATION

99. As required under section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Authority on 9 July 2013 of the pursuit and shooting of Mr Henry.
100. During its investigation into this incident, the Authority travelled to the scene of the shooting, interviewed AOS officers involved in the incident, analysed camera footage from motorway CCTV cameras and the Police helicopter camera and reviewed documents, including witness statements of officers involved in the incident, provided by Police.

Issues Considered

101. The Authority's investigation considered the following issues:
- 1) Did Police conduct the pursuit of Mr Henry in accordance with applicable law and policy?
 - 2) Did Police deploy road spikes in accordance with applicable Police policy?
 - 3) Was the shooting of Mr Henry lawful?
 - 4) Was proper command and control exercised during the incident?

The Authority's Findings

ISSUE 1: POLICE PURSUIT OF MR HENRY

102. Police were justified under law and Police policy in commencing the pursuit of Mr Henry. He was suspected of committing the offences of home invasion, burglary and assault, and had threatened to shoot at officers if they attempted to stop him.
103. As required by Police policy, AOS officers performed a risk assessment prior to commencing the pursuit and determined that the risk posed by Mr Henry outweighed any risk involved in the pursuit. At 12.30am, AOS Officer J advised that the incident had become a “*fleeing driver situation*.” NorthComms provided the pursuit warning that is required by policy, and this was acknowledged by AOS Officer B, driver of the lead AOS pursuit vehicle, and AOS Officer J. AOS Officer J then advised that all the pursuit vehicles had their lights and sirens activated.
104. AOS Officer J was assigned by the AOS Commander to be in charge of communication with NorthComms. During the pursuit he provided continual commentary about Mr Henry’s speed, manner of driving and the road conditions. As required by policy, Eagle took over primary responsibility for providing commentary to NorthComms after joining the pursuit near Bombay.
105. The pursuing AOS officers maintained speeds either below or at the relevant speed zone limits. At no time did Mr Henry’s manner of driving create a risk to the public or Police that required the pursuing officers or the NorthComms incident controller to consider abandonment.
106. All the officers involved in the pursuit were Gold class drivers. All the Police vehicles used during the pursuit were category A vehicles.

FINDING

Police were justified in commencing pursuit of Mr Henry and complied with law and policy throughout.

ISSUE 2: POLICE USE OF ROAD SPIKES

107. The Police fleeing driver policy and tyre deflation devices policy permit the use of road spikes to facilitate the end of a pursuit and stop fleeing vehicles in the safest possible manner.
108. Police policy requires the pursuit controller to approve the deployment of road spikes during a pursuit. The pursuit controller must also confirm that the officers who deploy road spikes are trained and certified to do so, and must regularly question deploying officers about their risk assessment in relation to the use of road spikes at a particular location, including road and traffic conditions. When officers select a site to deploy road spikes they must ensure it meets a number of requirements (detailed below in paragraph 151), conduct ongoing risk assessments

of the situation and deployment site and ensure that no other less dangerous means of stopping the vehicle is reasonably available.

(i) Approval to deploy road spikes and certification

109. As discussed above, the NorthComms incident controller, who had the role of pursuit controller throughout, individually authorised the three motorway road spikes deployments during this incident. He also issued a blanket authorisation for officers to deploy road spikes if they were in a position to do so safely (see paragraphs 42, 54–55).
110. During the pursuit the NorthComms incident controller transmitted reminders to officers to conduct risk assessments in relation to the use of road spikes. Prior to the pursuit reaching the Bombay road spikes site, he reminded officers of their individual responsibility to make risk assessments regarding the use of road spikes and the deployment locations.
111. The NorthComms incident controller did not confirm that officers tasked to deploy road spikes, at any of the deployment locations, were certified to do so as required by policy. In interview with the Authority, the incident controller said that he was aware of the requirements to do so, but said that his operational command of the incident would have been compromised if he had individually checked each officer's certification to deploy road spikes.
112. Three of the GDB officers tasked to deploy road spikes at the Bombay location were not certified. Under the Police Tyre Deflation Devices policy, there is also an onus on officers to only deploy road spikes if they are trained and certified to do so.
113. The failure by the NorthComms incident controller to confirm all officers were certified to deploy road spikes, and the three officers' subsequent involvement in deploying road spikes, breached Police policy. However, the Authority accepts that in the circumstances of this incident this non-compliance with policy was appropriate.
114. In light of the above the Authority notes that it would advantageous if the training details of officers who deploy road spikes during an incident were automatically available to Communications centre staff.

FINDINGS

The NorthComms incident controller, as pursuit controller, appropriately approved the road spikes deployments during this incident, and reminded officers of their responsibility to undertake risk assessments when doing so.

The pursuit controller's failure to check that the officers were certified to use road spikes, and the officers' own decision to deploy road spikes in the absence of certification, were justified in the unusual circumstances of this incident.

(ii) Deployment locations and risk assessment by deploying officers

(i) Bombay road spikes site

115. The NorthComms incident controller had instructed GDB Officer O to deploy road spikes on the motorway in the Bombay area. After discussion with GDB Officer P and other officers, GDB Officer O chose a location based on his initial plan to use the attenuator trucks to funnel Mr Henry onto road spikes, and which was prior to any motorway off-ramps. GDB Officer P said that he had suggested this location because it offered the highest degree of public safety. NorthComms was advised of the road spikes deployment location and, as noted above, approved the site.
116. GDB Officer O was required to switch to his secondary plan when the attenuator trucks arrived too late to be positioned safely.
117. Police policy states that road spikes deployment locations must provide cover and not require officers to take cover behind Police vehicles. In this case the surrounding area was open and offered the officers at the site no cover, and there was no solid median barrier to provide protection to southbound motorists. This was contrary to policy and created a significant risk to the officers' safety. As discussed above in paragraph 52, the officers were exposed to Mr Henry's rifle when he drove through the site.
118. However, the Authority accepts that the officers at Bombay chose the location and formulated their deployment plans based on their instruction to ensure that Mr Henry remained on the motorway, given the high threat to the public and officers that he posed. In these circumstances the non-compliance with policy was reasonable.

(ii) Ramarama road spikes site

119. At the second road spikes deployment site GDB Officer T deployed road spikes directly below the Ramarama overbridge. When Mr Henry drove through the site he took cover behind the large concrete support pillar dividing the motorway. NorthComms had earlier been advised of this deployment site and provided authorisation.
120. Before Mr Henry arrived at this site NorthComms notified Eagle of the deployment location via the Police Auckland radio channel. Eagle confirmed this location with GDB Officer T before advising over the Waikato analogue radio channel of the Ramarama road spikes deployment.
121. The location and execution of the road spikes deployment at Ramarama were in accordance with Police policy. The location provided sufficient cover and protection to GDB Officer T and any members of the public. This is confirmed by video footage of this road spikes deployment, taken from the Eagle camera and motorway JTOC surveillance system.

(iii) Victoria Park Tunnel road spikes site

122. The officers at the third and final road spikes deployment location, at the Victoria Park Tunnel, deployed road spikes about 100 metres after the tunnel where the motorway is bordered on both sides by concrete barriers. As discussed above in paragraph 68, the Senior Sergeant who led this road spikes deployment conducted a considered risk assessment of the location. Following this, NorthComms was advised of and approved the location and deployment.
123. The NorthComms incident controller advised the AOS Commander about the third road spikes deployment location and asked Eagle to forewarn the AOS officers about their proximity to the site when they got there. Eagle subsequently did so when Mr Henry approached the site.
124. Having also viewed the footage of this road spikes deployment, again taken from Eagle and the JTOC system, the Authority has concluded that the location and execution of the deployment accorded with Police policy. The location provided sufficient cover and protection to the deploying officers and any nearby members of the public.

FINDINGS

Whilst the location of the first road spikes deployment did not strictly comply with Police policy, the officers' actions in this respect were reasonable in light of the overall Police operation and threat presented by Mr Henry.

Police complied with policy in respect of location and risk assessment at the second and third road spikes deployments.

ISSUE 3: ISSUES CONCERNING THE VEHICLE STOP AND SHOOTING OF MR HENRY

(i) Shooting of Mr Henry

125. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender and in defence of themselves or another. However, any force used must be the minimum necessary to achieve the objective, and reasonable under the circumstances. The Police Tactical Options Framework guides Police in determining the appropriate level of force to use in certain situations.
126. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to effect an arrest or disarm an offender if they are available. However, if further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender.

127. The Authority is satisfied that AOS Officer C believed that Mr Henry posed an immediate threat of death or grievous bodily harm to himself and the other AOS officers when he fired his rifle from the Ford. At the time Mr Henry stopped, AOS Officer C knew that Mr Henry had repeatedly made threats to kill Police earlier in the incident, and had previously shot at the pursuing AOS officers when actively avoiding arrest during the pursuit. He had also observed Mr Henry point his weapon at motorists during the pursuit.
128. As discussed above in paragraph 84, at the time he fired AOS Officer C believed that Mr Henry was shooting at Police and presented a threat of death or grievous bodily harm. Based on what AOS Officer C believed in the circumstances, he was lawfully justified in shooting at Mr Henry. There was no less forceful method of resolving the situation reasonably available to him. In the circumstances, it was impractical to provide a warning or call on Mr Henry to surrender.

FINDING

AOS Officer C was justified under sections 39 and 48 of the Crimes Act 1961 and Police policy in shooting Mr Henry.

ISSUE 4: COMMAND AND CONTROL

(i) Overall Command and Control of the Incident

129. NorthComms was responsible for controlling the Police response to this incident. When Mr Henry was first located on SH28, the NorthComms Shift Inspector immediately assumed the roles of pursuit controller and NorthComms incident controller. In this role the NorthComms Shift Inspector maintained proper command and control of all Police activity during the pursuit up until the shooting of Mr Henry. This involved co-ordinating a large number of Police units and resources spanning four Police Districts, on three different Police channels, for an extended period of time.
130. The steps taken by the NorthComms Shift Inspector in relation to this are discussed in detail above (see paragraphs 14–20), and included: organising the armed response to Mr Henry; ensuring Police units involved in the incident were provided with relevant information about Mr Henry; organising traffic lights to be phased green and the closing of petrol stations along Mr Henry’s route; liaising with local Police units to deploy road spikes; and making frequent radio communications reminding officers to ensure their safety.
131. In accordance with Police policy, the NorthComms Shift Inspector passed the role of incident controller to GDB Officer O at the scene of the shooting after it was reported that shots had been fired.

FINDING

The NorthComms Shift Inspector, as pursuit controller and incident controller during the incident, maintained proper command and control of the incident.

(ii) Communication during the Incident

132. The communications issues created by the incompatible radio networks partially obstructed the smooth operation of this incident by Police in a number of ways. In particular, these radio difficulties prevented the communication of situation reports and commentary at appropriate levels.
133. In interview with the Authority, the NorthComms incident controller said that the incompatible radio networks, and corresponding need to switch between them, was “*the biggest impediment*” during the incident. In order to ameliorate these difficulties the NorthComms incident controller arranged for two Police vehicles with digital radios to be available at Bombay for the pursuing Waikato AOS officers.
134. The incompatible radio networks also affected the Waikato AOS officers once the pursuit entered the Auckland region. They could only receive updated situation reports via Eagle, which was operating both radio networks. This led to a lack of or a delay in the AOS officers’ awareness of critical activity, as demonstrated by their lack of awareness that road spikes were deployed at the Ramarama location, and the subsequent spiking of three AOS vehicles.
135. These problems were mitigated by the fact that the spiking of the AOS vehicles allowed the Waikato AOS officers, apart from AOS Officers A, C and D, to change into Auckland patrol vehicles with digital radios. In addition, Police were able to utilise Eagle, which operated both analogue and digital radios, and senior officers were able to communicate via cell phone.

FINDING

Incompatible radio networks caused communications difficulties for Police during this incident, but these did not ultimately affect the incident’s resolution.

(iii) Decision not to mobilise the Auckland AOS

136. The NorthComms incident controller considered that it was not necessary to mobilise the Auckland AOS because the pursuing Waikato AOS officers could resolve the situation, and he communicated frequently with the Waikato AOS Commander about tactics and risk. He acknowledged, in hindsight, that he could have contacted the Auckland AOS to discuss whether to mobilise them.

137. The Auckland AOS have access to Special Tactics Group four-wheel drive vehicles. These may have allowed Auckland AOS officers to conduct a more effective non-compliant vehicle stop at a suitable location. As discussed above, the Authority spoke to the Auckland AOS Commander on duty at the time of the incident. He said that adding more AOS vehicles to the pursuit would not have been desirable and a road block could have been problematic.
138. The Authority accepts that the NorthComms incident controller made a considered decision not to call out the Auckland AOS. He also decided to mobilise the Northland AOS shortly before Mr Henry stopped on SH1.

FINDING

The NorthComms incident controller's decision not to call out the Auckland AOS was reasonable in the circumstances.

139. In this report the Authority has identified the following issues in relation to the Police use of road spikes during the pursuit of Mr Henry:

- several officers who deployed road spikes at the first road spikes site were not certified to do so;
- the pursuit controller did not check the certification status of deploying officers;
- the pursuit controller issued a blanket authorisation to officers to deploy road spikes; and
- communication between the pursuit controller, deploying officers and pursuing officers did not meet the requirements set out in the Tyre Deflation Devices policy.

140. The Authority notes that Police are currently reviewing the Tyre Deflation Devices policy and as part of that review are considering how these issues should be addressed.

Conclusions

141. The Authority has concluded on the balance of probabilities that:

- 1) Police were justified in commencing the pursuit of Mr Henry and complied with applicable law and policy throughout the subsequent pursuit.
- 2) The NorthComms incident controller appropriately approved the three deployments of road spikes during this incident and ensured officers at these locations made risk assessments when doing so.
- 3) The location of the first road spikes deployment site did not strictly comply with Police policy, but the officers' actions in this respect were reasonable in light of the overall Police operation and threat presented by Mr Henry.
- 4) Police complied with policy in respect of location and risk assessment at the second and third road spikes deployment sites.
- 5) AOS Officer C was justified under sections 39 and 48 of the Crimes Act 1961, and Police policy, in shooting Mr Henry.
- 6) The NorthComms Shift Inspector maintained proper command and control as pursuit controller and incident controller during this incident.
- 7) The incompatible radio networks involved during this incident caused communications difficulties for Police, but these did not ultimately affect the resolution of the incident.
- 8) The NorthComms incident controller's decision not to call out the Auckland AOS was reasonable in the circumstances.



Judge Sir David Carruthers

Chair

Independent Police Conduct Authority

4 December 2014

Applicable Laws and Policies

POLICY

Legislative Authority for Pursuits

142. 100. Under the Search and Surveillance Act 2012, Police may stop a vehicle to arrest a person they have reasonable grounds to suspect is unlawfully at large or has committed an offence punishable by imprisonment. Section 114 of the Land Transport Act 1998 empowers Police to stop and speak to the driver of any vehicle.

Fleeing Driver Policy

143. Under the policy, a fleeing driver incident occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver. The Police tactic to apprehend is referred to as a pursuit.
144. The policy requires the pursuing officer to carry out a risk assessment both prior to initiation and during a pursuit. This must be based on consideration of the speed limit and manner of driving by the offending vehicle; identity and other characteristics of the occupants of the offending vehicle; weather conditions; the environment, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the Police driver and vehicle.
145. The policy requires the officers involved in the pursuit to notify the Police communications centre (Comms) when a pursuit commences and to provide situation reports to the pursuit controller (i.e. the NorthComms incident controller at Comms) in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit, including whether to direct the abandonment of the pursuit.
146. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public and police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with Comms and comply with all directions from the pursuit controller.
147. In incidents involving the AOS, the policy provides that the AOS Commander must act as the pursuit controller until command is transferred to the communications centre, unless operational circumstances dictate otherwise.

148. The policy also provides that AOS Commanders may authorise a non-compliant vehicle stop during situations involving a mobile armed offender. This may only be done when the offender does not comply with Police requests or signals to stop, and there is no other practical method of stopping them. AOS personnel may only use this tactic when they are responding to a life threatening incident, do so in accordance with AOS standard operating procedure and when authorised by the AOS Commander. The AOS officers who undertake the tactic must be trained in its use.

Tyre deflation devices

149. Under the Police Tyre Deflation Devices Policy, tyre deflation devices (TDD's) may be used by Police where there is no other, less dangerous means of stopping a vehicle reasonably available, and deployment does not create an unjustified risk. The deployment of TDD's must be approved by the pursuit controller. TDD's must be deployed by officers trained in their use.

150. TDD's must not be deployed if there is a likelihood of injury to members of the public, Police or the offender(s).

151. Officers must notify the Communications centre of the location at which they deploy TDDs. When officers select a location to deploy road spikes, the site must:

- Always provide cover and an escape route for deployment staff;
- not be on or immediately before a bend in the road;
- provide a clear view of the road in all directions, to allow officers to observe the fleeing vehicle and other traffic as it approaches;
- not rely on the use of Police vehicles or any other vehicles to provide cover, unless operational circumstances require such in the interests of officer safety;
- allow the safe deployment of the road spikes;
- provide enough space to deploy the road spikes but not enough that the offending vehicle can easily evade them; and
- be far enough away from the target vehicle to give time for selecting and assessing the site and deploying the road spikes.

Use of force by Police

152. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use "*such force as may be necessary*" to overcome any force used in resisting the law enforcement process unless the process "*can be carried out by reasonable means in a less violent manner.*"

Use of force in self-defence or defence of others

153. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*

General guidance on the use of force

154. The Police have a range of Tactical options available to them to help restrain a person, make an arrest or otherwise carry out lawful duties. These options are set out in the Tactical Options Framework. They range from communication or ‘empty hand’ tactics, such as distracting or punching an offender, to the use of lethal force which includes the use of firearms or strikes to the head or neck.

155. Which option is appropriate in a set of circumstances depends on whether the offender:

- is cooperative;
- is resisting, either passively or actively;
- is actively hostile and intending to cause physical harm; or
- presents a threat of death or grievous bodily harm.

Use of firearms

156. Police General Instructions F061 (Fire Orders) provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves in a less violent manner.

157. The Crimes Act provisions are mirrored in General Instruction F061 in the ‘Police Firearms’ chapter of the Police manual. General Instruction F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act and also sets out the circumstances in which the use of lethal force is justified.

158. In operational situations where firearms are issued, General Instruction F061 also requires that an officer’s attention is drawn to the fire orders printed in their notebook *“if time and circumstances permit.”*

159. Police policy also requires officers to notify their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms.

Incident control and communication

160. The Police Radio Protocols policy details incident control responsibilities and communications requirements to which Police must adhere when responding to incidents. The policy states that: *“An efficient and effective Police response to incidents requires that everyone involved in the process clearly understands their own role and responsibilities, and those of the other participants.”*
161. Under the policy, the communications centre is responsible for the initial Police response to an incident. The communications NorthComms incident controller has the primary responsibility to act as the ‘NorthComms incident controller’.
162. For as long as the communications centre retains the responsibility for incident control, officers at the scene must comply with the directives given by the NorthComms incident controller (or by the delegated team leader or dispatcher). The NorthComms incident controller makes the final decision on operational matters and *“is expected to actively manage, direct and supervise those staff responding to the incident, including initial tactics to be utilised.”*
163. The policy provides that the communications centre retains the responsibility for incident control until that role is formally passed to a suitable officer in the field, preferably ranked sergeant or above, who is willing to assume command. The policy sets out formal procedures for handing over responsibility, and states that incident control will not be handed over to a field supervisor until he or she has arrived at a safe forward point, been fully briefed, and formed a tactical response plan.
164. Once incident control has passed to a field unit, the NorthComms incident controller is still required to maintain active oversight of the Police response. This may include engagement with the NorthComms incident controller over tactics and timing, peer support and mentoring, and advice about legislative powers. Even after incident control is handed over, there may be situations where the field supervisor is no longer best placed to manage the Police response, and so the NorthComms incident controller may take back incident control. One example of when this may occur is when the offender is mobile.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

On completion of an investigation, the Authority must form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
