



IPCA

Independent Police
Conduct Authority

Whaia te pono, kia puawai ko te tika

Fatal Police shooting of Adam Morehu

February 2015

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Introduction

1. In the early hours of Saturday, 8 June 2013, Police responded to a report of a burglary in progress at the New Plymouth Golf Club. During the incident that ensued, Adam Morehu was shot and killed by Police.
2. Police notified the Independent Police Conduct Authority ('the Authority') of the incident, and the Authority conducted an independent investigation.
3. Police carried out a separate investigation, which determined that no criminal charges should be laid against the officer who fired the shots.
4. The Authority's investigation considered matters of Police conduct, and compliance with relevant laws and Police policies, practices and procedures. This report sets out the results of that investigation, and makes findings.
5. The Authority has examined issues arising in this case relating to the arming of officers; whether tactical options other than the use of firearms were available and considered; whether the shooting of Mr Morehu and other force used against him was justified; communications, and command and control of the Police response; and whether Police actions following the shooting were appropriate.

Index of officers

Police staff	Roles/Comment
Officer A	Dog handler
Officer B	GDB ¹ Constable
Officer C	GDB Constable
Officer D	GDB Sergeant
Officer E	GDB Constable
Officer F	GDB Constable
Officer G	GDB Constable
Officer H	GDB Constable
Officer I	GDB Sergeant
Officer J	GDB Constable

¹ General Duties Branch (or 'uniform' Police staff)

Timeline of events

Time (approx.)	Event
3.55am	Police dog handler, Officer A, dispatched by CentComms to alarm activation at New Plymouth Golf Club.
4.00am	Security guard arrives at the golf course entrance shortly before Officer A.
4.02am	Officer A confirms a break-in at the golf club and subsequently begins tracking.
4.17am	Officer A informs CentComms that he has located the offenders on a motorcycle.
4.19am	Officer B arrives at the entrance to the golf course.
4.19am	Mr Morehu fires a single gunshot at Officer A.
4.20am	Security guard leaves the golf course.
4.20am	Officer B reports that there is an armed offender.
4.23am	Officer D arrives at the golf course entrance shortly followed by Officer E.
4.25am	Officer E speaks to Officer A and advises CentComms that shots have been fired.
4.26am	AOS paged by CentComms.
4.27am	Officer E approaches and fires her Taser at Mr Morehu.
4.28am	Officers G and H arrive at the entrance of the golf course.
4.28am	Officer E requests the attendance of an ambulance.
4.29am	Officers E, G, H, and D approach Mr Morehu from the front. Officer B gets up from his position and begins his approach of Mr Morehu from the rear.
4.29:30am	Officer G fires his Taser at Mr Morehu.
4.29:36am	Officer E fires her Taser at Mr Morehu.
4.29:36am	Officer B fires a single shot from his Glock at Mr Morehu.
4.29:38am	Officer G fires his Taser at Mr Morehu.
4.29:40am	Officer B fires a second shot from his Glock at Mr Morehu.
4.29:44am	Mr Morehu falls to the ground.
4.30am	Officers H and E each make a request for urgent ambulance attendance.
4.30am	Officers I and J arrive at the entrance to the golf course.
4.36am	An ambulance arrives at the entrance of the golf course and paramedics are taken to the scene.
4.41am	A second ambulance arrives at the golf course.
4.54am	A paramedic notices a firearm on the ground and seeks confirmation from Officer E that Mr Morehu has been shot.
5.05am	Paramedics locate the bullet wound to Mr Morehu's lower back, confirming that he has been shot.
5.07am	Mr Morehu is pronounced dead by paramedics at the scene.

Background

Police respond to alarm activation

6. At 3.55am² on 8 June 2013, Police dog handler, Officer A, was dispatched by the Police Central Communications Centre (CentComms) to the New Plymouth Golf Club following advice from a security firm that multiple alarms had been activated on the premises. It is Police standard operating procedure to dispatch Police dog units to suspected burglaries as soon as possible to enable offenders to be tracked if required.
7. CentComms then dispatched two other units, the first of which was crewed by nightshift General Duties Branch (GDB) staff, Officers B and C, and the second by their sergeant, Officer D.
8. A security guard was the first to arrive at the golf club, at about 4.00am, and was attempting to open the gates at the entrance when Officer A arrived. Officer A removed the Police dog from his vehicle and ran past the security guard, and up the driveway to the Club's pro-shop and clubhouse.
9. Officer D pulled in behind Officer A but he drove off almost immediately at the direction of CentComms to set up a cordon point nearby.³ Officers B and C decided on their own initiative to set up other cordon points. Officer B did so in the nearby suburb of Bell Block, after dropping Officer C to take up a static cordon position to cut off one of the walkways between Bell Block and the golf course.
10. At 4.02am, Officer A confirmed to CentComms that the golf club premises had been broken into. At this point, a fourth unit, crewed by Officers E and F (nightshift GDB staff), also headed towards the golf course. After speaking with Officer C, Officer F was dropped off so that two further cordon points could be set up in the vicinity of the golf course.

Initial encounter with the burglars

11. After confirming the break in, Officer A harnessed the Police dog and cast it to track the offenders. The dog eventually located a strong scent that tracked the offenders away from the buildings, towards the main entrance, and along the treeline separating the golf course from the main road.
12. As he was tracking, Officer A saw a motorcycle with driver and passenger on the course, and issued a challenge for them to stop, warning them that the Police dog would be deployed if

² The timings of the sequence of events that follow were determined, to the best of the Authority's ability, by analysing officers' notebook entries and statements; Witness statements; CentComms Event Log, CentComms Radio transcript and recording; CentComms telephone call transcripts; the security vehicle's GPS; and Officer E's and Officer G's Taser camera transcripts and footage.

³ Setting up cordons is also standard practice for suspected burglaries to contain offenders and maintain observation points to keep the applicable Police Communications Centre informed.

they failed to comply. When the two men (later identified as Adam Morehu and Kevin Bishell) ignored his directions, Officer A let go of the tracking line, releasing his dog. The Police dog chased the motorcycle, being driven by Mr Morehu, on to the fairway and then back around towards the main entrance of the golf course. The following photograph shows the entrance and the scene where the following sequence of events primarily took place.⁴



13. Officer A then called his dog back as he was concerned about its safety given the offenders' proximity to the roadway. At approximately 4.17am, Officer A informed CentComms that he had located the offenders on a motorcycle. As Officer A was reporting his location to CentComms, he saw the pair fall from the motorcycle, which tipped as Mr Morehu rode up a slope on the course. Officer A commanded his dog to 'rouse' (the verbal command given to a Police dog to signal it to seize an offender) and it subsequently took a bite hold on Mr Bishell's arm.
14. Officer A tackled Mr Morehu, who was attempting to pick up the motorcycle, ending up on Mr Morehu's back over the front wheel. As he did so, Officer A saw Mr Bishell attempting to get to his feet (with the dog still attached). He got off Mr Morehu and ran over to Mr Bishell, who was approximately three metres away. Officer A jumped on top of Mr Bishell, using his body weight to take Mr Bishell to the ground, giving his dog a dominant position and making it more difficult for Mr Bishell to get to his feet again. Officer A then saw Mr Morehu getting to his feet, so he left Mr Bishell with his dog, which now had a bite hold on Mr Bishell's leg.

⁴ This is a Police photograph that has been included in the report with their permission and in consultation with Mr Morehu's family.

15. Officer A ran at Mr Morehu, and the pair became involved in a face-to-face physical tussle, each attempting to restrict the other's movement. The pair also had a brief verbal exchange, during which Mr Morehu reportedly stated that he had a firearm and that he would shoot Officer A. Although Mr Morehu was wearing a motorcycle helmet, Officer A managed to use his Oleoresin Capsicum spray (OC spray) directly into Mr Morehu's face, causing him to let go of Officer A. As he did so, Mr Morehu made a further threat to shoot him. Officer A has stated that he did not take these threats seriously at the time.
16. During this period, there was significant discussion between CentComms and the other Police units due to confusion over Officer A's exact location and what he had actually said. It was later established that any subsequent radio transmissions made by Officer A were not heard due to his radio accidentally switching channel at some stage during his engagement with the two offenders.
17. Officer A then noticed that his dog appeared to be in an awkward position and thought that Mr Bishell might be attempting to choke or strangle it. Officer A left Mr Morehu and again approached Mr Bishell. He grabbed Mr Bishell and dragged him onto flatter ground (a more advantageous position for the dog) and directed his OC spray through the open visor of Mr Bishell's motorcycle helmet.
18. As Officer A looked up from where he was standing over Mr Bishell, he noted with some surprise that Mr Morehu had not attempted to run off. At approximately 4.19am, as he took an initial step back towards Mr Morehu (who was now 10-12 metres away), Officer A heard a firearm discharge and saw Mr Morehu silhouetted in the muzzle flash. Officer A immediately grabbed Mr Bishell for cover, and dragged him and the Police dog (who still had a bite hold on) away from Mr Morehu.
19. As he did so, Mr Bishell's legs and the dog became tangled in the tracking line. When they came to a standstill, Officer A repositioned his dog and allowed it to re-establish a bite hold on Mr Bishell. He ignored Mr Bishell's repeated requests for the dog to be removed as he did not consider that he had adequate control of the situation.
20. Officer A, who was unarmed, was concerned that he may be shot by Mr Morehu if he attempted to run to the tree line, and he did not want to leave his dog. He considered the option of advancing upon Mr Morehu with his dog, in the event that Mr Morehu moved down the hill towards them and Officer A was able to free his dog from the tracking line or harness. However, Mr Morehu remained where he was.

Officer B's arrival and subsequent actions at the scene

21. Shortly after hearing Officer A's radio transmission that he had located the offenders on a motorcycle, Officer F suggested that Officer B head to the golf course. While Officer B did not respond to Officer F, he immediately did so. Officer B did not inform CentComms of his arrival at the golf course. The accounts given by Officer B and the security guard about the sequence of events that followed are inconsistent. While the discrepancies could not be resolved by the

Authority, it is evident from the GPS in the security guard's vehicle that the pair came across each other in the driveway of the golf club at 4.19am.

22. In his Police statement and at Authority interview, Officer B reported that upon his arrival at the golf club, the security guard was stopped in his vehicle, blocking the main entrance gate. He recalled that he was required to get out of his vehicle to tell the security guard to move, and that as he did so he heard a firearm discharge from the direction of the golf course, which caused him to run towards the security vehicle. Officer B then essentially forced his way into the driver's side by pushing the security guard onto the passenger side. Officer B reported that he was unable to see the car keys and, deciding that it was unsafe to remain in that position, he got out of the security vehicle, and instructed the security guard to leave.
23. In his Police statement and at Authority interview, the security guard reported that he was moving his vehicle down the driveway towards the main entrance and, as he did so, his vehicle came head to head with that of Officer B. The security guard recalled that Officer B did not get out of his vehicle but reversed it, allowing the security guard to pass and continue down the driveway, where he came to a stop in the vicinity of a wooden gate leading onto the golf course. The security guard recalled observing Officer A and Mr Bishell on the ground directly on the other side of the fence, and Mr Morehu making aggressive gestures approximately ten metres from the pair.
24. The security guard recalled that at one point Mr Morehu may have been holding something in his right hand, which he thought was a club or "*jemmy bar*". The security guard stated that Officer B, who had come from somewhere behind him, subsequently "*charged*" past him, jumped the fence and ran a short distance toward Mr Morehu before he turned sharply and ran back, yelling, "*gun, gun, gun*". At this point the security guard's recollection of how Officer B jumped into the security vehicle, and subsequently instructed the security guard to leave, aligns with Officer B's description of events.
25. The security vehicle's GPS shows that the security guard left the scene at 4.20am. At about this time, a radio transmission was made, advising, "*We've got an armed offender...armed offender at the base of the...um...ah...golf club.*" While most of the officers listening assumed it was made by Officer A (as they were not aware of the presence of any other Police staff at the golf course), the Police investigation identified that this statement was made by Officer B. Officer B did not recall making this transmission or, in fact, any others while at the golf course. After leaving the security guard, Officer B returned to his vehicle, reversed it down the driveway, and parked it across both lanes. He intended to light up the golf course with the vehicle's headlights but was unsuccessful due to the contour of the land.
26. Officer B then got out of his vehicle and heard Officer A's pleas for assistance from his position on the golf course and Mr Morehu yelling from further up the slope. Officer B went around to the passenger side to retrieve the Police-issue '*Glock*' pistol from the lockbox. He reported that he ensured that the ammunition was correctly loaded in the magazine and turned his mind to Police policy relating to the use of firearms by Police (outlined in paragraph 204.3).

27. Officer B left a Taser in the open lockbox, with the keys (to the lockbox and the vehicle) in it. He did not take a ballistic vest or M4 Bushmaster rifle, stored in the boot of the vehicle, as he considered that there was insufficient time to do so due to there being an immediate threat to his safety and that of Officer A.
28. Officer B climbed the slope towards Mr Morehu and reports that within seconds of Mr Morehu coming into sight (approximately 10 to 15 metres away), he heard a firearm discharging, similar to the previous shot he had heard. Officer B did not see Mr Morehu in possession of a firearm or a muzzle flash.
29. Officer B immediately ran back towards his vehicle and then, in an effort to get out of the light, made his way up the driveway on foot towards the clubhouse. Officer B was concerned that Mr Morehu may have given chase or that other offenders may have been present and, in order not to give away his position, he turned off his portable radio at the top of the driveway. At the point at which he did so, Officer B's colleagues and CentComms were still unaware of his presence at the golf course.
30. Officer B then ran across the carpark to the clubhouse and pro-shop before, as explained to the Authority at interview, he experienced guilt at having left Officer A. He then moved to the top of an incline in front of some prefabricated sheds, positioning himself in the tussock directly overlooking the scene. While in that position Officer B saw Mr Morehu, who had remained in close proximity to the motorcycle, pacing and intermittently yelling in an agitated manner.

The arrival and actions of other Police staff at the scene

31. After hearing Officer A advise that he had located the offenders on a motorcycle, Officer D made his way back to the golf course. While en-route, he heard Officer B's transmission that the offender was armed. Officer D arrived at the golf course at 4.23am (parking behind Officer A's vehicle) but remained in his vehicle to listen to further radio transmissions.
32. Officer D then checked the Police vehicle (Officer B's) parked across the driveway with its lights on, having found the passenger door and lockbox open. Although Officer D advised, at Authority interview, that he was concerned about the state of the vehicle and the whereabouts of the occupants and the Glock, he did not inform CentComms or secure the lockbox and remove the keys.
33. As Officer D returned to his vehicle, Officer E arrived. Believing Officer A was dealing with an armed offender, Officer E informed CentComms of her arrival and immediately retrieved a Taser from her vehicle's lockbox and got out of her vehicle. At Police interview, Officer E reported that she could hear Officer A yelling and he sounded "*in imminent danger.*" Officer E decided that reaching back into the vehicle to get the Glock from the lockbox was a risk to her own safety and, instead, decided to get the Bushmaster rifle from the boot. However, Officer E had difficulty unlocking the gun safe due to the pressure of the situation and decided to proceed without it.

34. In her haste, Officer E dropped the Taser. Once she picked it up, Officer D assisted her to affix it correctly to her belt. Officer E told Officer D to return to his vehicle to get a firearm, and headed down the driveway to the wooden gate leading onto the golf course. Officer D did not return to his vehicle and, instead, followed Officer E. Neither officer was wearing ballistic body armour.
35. Officer E saw Officer A on the ground with the Police dog and Mr Bishell, and approached them by climbing over the gate, followed by Officer D. At 4.25am, Officer E requested radio silence while speaking to Officer A. At Police interview, Officer E stated, "*Officer [A] said something like, 'He's just there, he's got a firearm, and he's fired at us.'*" Officer E consequently reported to CentComms, "*we've got shots fired, shots fired.*" Officer E was uncertain of the reason why Officer A was unable to move but, aware that he was vulnerable in this position, she decided to attempt to distract Mr Morehu by approaching him, while yelling instructions and pointing her Taser at him.
36. Following confirmation from Officer E that shots had been fired, CentComms paged the Armed Offenders Squad (AOS).

Police deploy Tasers and pistol

37. Officer E began an approach along the fence-line, toward Mr Morehu, who was about 25 metres away. Taser camera footage indicates that Officer E issued a voice appeal to Mr Morehu to put down the gun, to which he responded by stating, "*I ain't got no fucken gun...I've got a 303, bitch.*"
38. Officer D gave repeated instructions to Officer E to retreat. Officer E continued toward Mr Morehu. As she did so, Officer E advised CentComms that she was armed with a Taser and that Mr Bishell was in custody. She then issued a further instruction to Mr Morehu to put the weapon down and continued to approach him. Ten seconds later, at approximately 4.27am, Officer E discharged the Taser. She did so without issuing a verbal warning to Mr Morehu.
39. At this point, concerned about Officer E's safety and her failure to comply with his instructions, Officer D returned to his vehicle to retrieve his Glock.
40. The Taser appeared to hit Mr Morehu but had no tangible effect. Officer E immediately ran back to Officer A, at which time she realised that he had not been shot, but was still unable to retreat. Officer E stated that at this point she heard what she believed was a firearm discharging behind her, from Mr Morehu's direction. Officer E did not inform CentComms of this.
41. Leaving Officer A, Officer E climbed back over the fence and ran up the driveway (parallel to the fence-line) to approach Mr Morehu from an alternative angle. As she did so, she radioed CentComms, requesting an ambulance, providing clarification as to their exact location on the golf course, and advising that she had fired her Taser but had retreated at the request of Officer D.

42. During this period, Officer E stated twice that, although Mr Morehu was in sight, she could not see a weapon. Officer E repeatedly instructed Mr Morehu to keep his hands in the air or where Police staff could see them. These instructions were met with verbal abuse by Mr Morehu.
43. Also during this period, Officer A managed to handcuff Mr Bishell and to rip the tracking harness from his dog. However, Officer A remained where he was on the ground with his dog and Mr Bishell.
44. While Officer D was at his vehicle, Officers G and H (late shift GDB staff) arrived, parking their vehicle directly behind his. Officer D instructed them to retrieve a firearm before he returned to the scene. However, the pair had discovered, upon getting into the vehicle at the Police station, that there was no lockbox in the passenger footwell and, upon arrival at the golf course, that there was no firearm in the boot. An attempt was made to retrieve a firearm from Officer D's vehicle but it was locked. Officer G was armed with a Taser, which had been obtained prior to their departure from the Police station. Officer H was unarmed. Neither officer was wearing ballistic body armour. The pair approached the scene guided by Officer E's voice, as she continued to caution and challenge Mr Morehu.
45. At 4.29am, Officers E, G, H, and D approached Mr Morehu, with their respective weapons drawn, in an (unintentional) arc formation from left to right. None of the officers were aware of the presence, at the golf course, of Officer B until he was seen approaching Mr Morehu from behind with his Glock drawn. Up until that point, Officer B had been watching the scene unfold before him from his position in the tussock.
46. Although all of the officers (who arrived at the scene after Officer A) were, by that time, aware that the incident involved a firearm, none had seen Mr Morehu holding a firearm or, indeed, any weapon during the incident. However, Mr Morehu had made multiple statements about having a gun in his possession, and each of the officers refer to seeing Mr Morehu's hands at various stages, and consistently report observing ongoing movements being made by him that indicated he was searching for something in his clothing, pockets, and bag (a backpack worn on his chest). This is also evident on the Taser camera footage.
47. Officer E instructed Mr Morehu, who was standing beside the motorcycle, to "*keep your hands where we can see them*". Mr Morehu failed to comply, responding, "*can you see them on this fucking gun?*" At 4.29:30am, Officer G discharged his Taser and, although it struck Mr Morehu, it appeared to have no discernible effect. Approximately six seconds later, Officer E (unaware that she was using a spent cartridge having inadvertently failed to reload after its earlier use) discharged her Taser. Almost simultaneously, but from his position six or seven metres behind Mr Morehu, Officer B fired his Glock. Officer G discharged his Taser again approximately two seconds later and, after racking the slide to clear what he believed was a blockage in his Glock's chamber, Officer B fired for the second time approximately two seconds after that.
48. Although Officers D and H were aware that Officer B had discharged his firearm, only Officer B was aware, at that stage, that Mr Morehu had in fact been shot.

49. At 4.29:44, Mr Morehu fell to the ground and began to groan. Officers E and G then attempted to secure Mr Morehu by applying handcuffs, which Mr Morehu appeared to resist. In order to gain compliance from Mr Morehu, Officer E attempted to deliver a contact stun to Mr Morehu's torso with the Taser, but accidentally shocked herself.
50. Officer H had run in and placed his knee on Mr Morehu's head, and Officer B assisted by holding Mr Morehu's legs with one hand, while holding his Glock in the other. Mr Morehu resisted attempts to secure him in handcuffs by pulling his hands away from Officer G. It was clear that Mr Morehu did not have a firearm in either hand. At this point, Officer H struck Mr Morehu in the head twice with his Police-issue Maglite torch. Officer G was then able to apply a handcuff to Mr Morehu's left wrist.
51. Mr Morehu's right arm was extended over and around his head, and he appeared to be attempting to tuck his head into the crook of his elbow, which prevented Officer G from securing his right wrist. Officer E hit Mr Morehu in the head with a closed fist in order to gain compliance. Officer H then struck Mr Morehu again twice in the head with his torch, which caused Mr Morehu to flinch, allowing the officers to get a purchase on his arm. Officer G then secured Mr Morehu's right wrist.

Police assessment of Mr Morehu's injuries

52. While the arrest process was in train, it appears that a wound was identified on Mr Morehu's lower back and that there was some discussion among the officers about whether he had been shot. At this point, Officer H noticed that Officer B was attempting to assist while still holding his Glock, and suggested he move away. Officer B left the immediate scene to secure his firearm in his vehicle. Officer D followed shortly thereafter to inspect Officer B's firearm and to secure his own.
53. Mr Morehu subsequently started to 'froth' at the mouth. His handcuffs were removed, and Officer G checked and confirmed that Mr Morehu had a pulse. Attempts were made to loosen the clothing around Mr Morehu's neck, an exercise made difficult due to the multiple layers of clothing he was wearing. Mr Morehu was unresponsive and subsequently lost consciousness. At 4.30am two further requests were radioed by Officers E and H for urgent ambulance attendance. At some point during this process Mr Morehu was moved by the officers up onto flatter ground to assist with the administration of first aid.
54. At approximately 4.30am, Officers I and J arrived at the golf course. Officer I, the late shift GDB sergeant (and an AOS Section Leader), approached the immediate scene but returned to Officer D's vehicle to retrieve a defibrillator. The ambulance was requested to go directly to the entrance of the golf course. When Officer I returned, Mr Morehu was not breathing, and Officer E commenced chest compressions. The defibrillator pads were applied. However, the officers followed the machine's automated instructions not to administer shocks. Officer I asked CentComms for the estimated arrival time of the ambulance.
55. At approximately 4.36am, the first ambulance arrived at the golf course, and the two paramedics made their way to the scene with the assistance of Officer J. The defibrillator pads

were removed and Police staff were instructed to continue chest compressions while the paramedics attempted to resuscitate Mr Morehu. A second ambulance, with two paramedics, arrived at 4.41am.

56. At approximately 4.54am, after noticing Mr Morehu's firearm on the ground, a paramedic asked the Police officers assisting with CPR if Mr Morehu had been shot. Officer E, who had assumed Mr Morehu's collapse was due to being Tasered, was the only officer who responded and went to seek advice from other officers, who had moved away from the immediate scene. Officer E stated, at Authority interview, that she believed she advised the paramedics, upon her return, that she understood that Mr Morehu had been shot, followed by something akin to, "*but I'm not sure if it was us [Police]*".
57. At approximately 5.05am, the paramedics established that Mr Morehu had, in fact, been shot after he was rolled over and the bullet wound on his lower back was sighted. It was determined at that time that further resuscitation attempts were futile, and his time of death was recorded as 5.07am.
58. While Mr Morehu was being treated, Officer H had taken over responsibility for Mr Bishell from Officer A. Mr Bishell was subsequently transported to New Plymouth Police Station and was later charged with a number of offences in relation to this incident. Mr Bishell sustained only superficial wounds from the Police dog bites, which did not require hospital treatment.

Preservation and assessment of the scene

59. Police officers used their torches to make observations of the immediate scene. Mr Morehu's sawn-off .22 semi-automatic rifle (modified to the point where it actually meets the technical specifications of a pistol pursuant to the Arms Act 1983) was located on the ground, barrel out, under the front wheel of the motorcycle. A wooden (axe) handle, an axe and a bolt cutter were also located in the vicinity of the motorcycle.
60. Officer I assumed control of ensuring that the immediate scene was preserved (initially tasked to Officers G and E, until they were relieved); staff were tasked to deal with Mr Bishell; Police firearms and vehicles were secured in-situ; the wider boundaries of the scene were identified and secured; staff were tasked to guard the scene; and arrangements were made for the officers involved in the incident to be transported back to the Police station.

Medical and forensic findings

61. The two shots fired by Officer B struck Mr Morehu in the back, in the lower right and upper left of his torso. The forensic pathologist, who conducted Mr Morehu's post-mortem, determined that the bullets caused extensive damage to the chest wall and lung, and a major artery, and that each of the wounds could have proved fatal in their own right even if full operating facilities had been immediately available.

62. The pathologist noted a small laceration with surrounding bruising on the upper outer orbital bone adjacent to Mr Morehu's right eye. While this injury was caused by blunt force, it was not assessed as significant to Mr Morehu's survivability.
63. Mr Morehu's body was approximately 4.7 metres from the motorcycle and 4.6 metres from his firearm. As outlined in paragraph 53, Mr Morehu had been moved by Police officers from the position where he originally fell to the ground to render first aid.
64. ESR's examination of the scene found one fired cartridge case from Mr Morehu's firearm, approximately 2.8 metres from the firearm, and in close proximity to the rear tyre of the motorcycle. Two unfired cartridges, loaded with hollow-point bullets, were jammed in the receiver of his firearm. ESR considered that the jammed cartridges were an indication that the firearm had been "*manually operated in an attempt to either free a jammed cartridge or load another cartridge, resulting in a second unfired cartridge becoming jammed within the receiver.*" Three unfired cartridges from Mr Morehu's firearm, also loaded with hollow-point bullets, were located at differing spots between approximately 2.1 and 2.4 metres from the firearm.
65. ESR determined that three Taser cartridges (each with two probes connected to the cartridge wire) were fired during the incident. Three Taser probes were located in Mr Morehu's clothing on his lower body, none of which had penetrated his skin. Two Taser probes were located at the scene, and the remaining probe was unaccounted for.
66. Two fired cartridge cases from Officer B's Glock were found adjacent to Mr Morehu, approximately 3.6 metres from each other. ESR determined that Officer B changed positions between shots, and estimated that he was no closer than 2.1 metres from Mr Morehu when the shots were fired.

The Authority's Investigation

THE AUTHORITY'S ROLE

67. 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.
68. 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

69. As required under section 13 of the Act, Police notified the Authority on 8 June 2013 of the fatal shooting of Mr Morehu.
70. On 8 June 2013, an Authority investigator travelled to New Plymouth, where he visited the scene, and attended several Police briefings over the course of two days.
71. On 31 July 2013, the investigator met with members of Mr Morehu's family. The Authority has continued to maintain regular contact with Mr Morehu's family throughout the course of its investigation.
72. The Authority monitored the Police's criminal investigation throughout and reviewed all the documentation produced as a result of their enquiries.
73. Evidence was obtained by Police from those experts involved in the detection, collection, preservation, and analysis of forensic evidence from the scene. Consequently, the Authority considered the reports produced by the pathologist, forensic staff from the Institute of Environmental Science and Research Ltd (ESR), and the Police Armourer.
74. The Authority's investigation team independently interviewed eight Police officers, who had direct involvement in the incident, two Police staff from the Central Communications Centre, Mr Bishell, the security guard, a paramedic, and the pathologist.
75. Finally, the Authority has assessed the actions of Police involved in this incident against Police policy and practice standards, applicable at the time of this incident.

ISSUES CONSIDERED

76. Having completed its independent investigation and considered all of the relevant material, the following issues fall to be determined by the Authority:
- 1) Were Police justified in arming themselves in response to this incident, and were all procedures complied with?
 - 2) Was the initial tactical response to an armed Mr Morehu properly considered and appropriate in the circumstances?
 - 3) Was the force used by other officers during this incident justified in the circumstances?
 - 4) Was Officer B justified in shooting Mr Morehu?
 - 5) Did Police comply with all requirements in respect of communications, and command and control during the incident?
 - 6) Was all reasonable assistance given to Mr Morehu after he was shot?

The Authority's Findings

CARRIAGE OF FIREARMS

Issue 1: Were the Police justified in arming themselves in response to this incident, and were all procedures complied with?

The justification for and process of arming

77. The 'Carriage and Use of Firearms' chapter of the Police Manual sets out the circumstances in which officers may arm themselves (see paragraphs 202-204). In essence, there must be "*clear and specific evidence*" that officers may encounter a situation that requires them to use firearms in self-defence or defence of another, or to effect an arrest or prevent an escape, in accordance with the relevant provisions of the Crimes Act 1961.
78. Officers who hold the rank of sergeant or above, or are authorised by a supervisor, may arm themselves; other officers may also use their discretion to arm if it is not practical to obtain prior authorisation.
79. The policy requires officers to notify the communications centre and to put on ballistic body armour when they arm or attend an incident where a firearm might be involved (see paragraphs 203 and 204). Officers must carry Glocks in an authorised Police-issue holster and, if available, they must also take a Taser, when arming. Officers must be familiar with the law and policy setting out the circumstances in which firearms can be used and, if time and circumstances permit, supervisors must draw their attention to 'Fire Orders' (see paragraph 204.3), which set out the circumstances in which Police officers may use firearms. These are printed on the inside cover of the Police issue notebooks, and are also stored in vehicle firearm security cabinets.
80. When Police initially responded to the alarm activations at the golf club, there was no suggestion that a firearm was involved. However, from the time Mr Morehu fired his gun at Officer A (a shot heard by Officer B) there was "*clear and specific evidence*" that the threat of death or grievous bodily harm existed, and that firearms might therefore be required either for the purposes of self-defence or to carry out Mr Morehu's arrest.
81. This became relevant for the other responding officers, when Officer B subsequently communicated to CentComms that there was an armed offender. While it is accepted that Officer B did not specify what type of weapon the offender was armed with, it is evident that the responding officers believed the incident involved a firearm, and that they were very concerned about Officer A's safety and wellbeing. The Authority is satisfied that the officers involved in this incident were justified in arming themselves.
82. Officer A believed he was responding to a routine alarm activation. As he did not typically respond to any incidents with a firearm in his vehicle, he was unarmed. However, all of the

other officers were aware that there was an armed offender present. Based on this information:

- 82.1 Officer B** armed himself shortly after hearing a shot being fired. Although there was no explicit instruction for him to arm (as he had not informed anyone of his arrival at the golf course or that shots had been fired), his decision was appropriate under the circumstances. Officer B stated at Police interview that he was aware, at the time, of the requirements for the use of firearms. However, Officer B should have informed CentComms that he had armed himself and also retrieved the Taser from his vehicle.
- 82.2 Officer E** immediately armed herself with a Taser upon arriving at the golf course. She left the Glock pistol in the lockbox before exiting the vehicle. Officer E then formed the belief that Officer A was in imminent danger and attempted to retrieve the bushmaster rifle from the boot of her vehicle. In the stress of the situation, Officer E was unable to unlock the lockbox, and decided to proceed with only the Taser. In June 2013, Police policy instructed officers that:

*“Police firearms remain the most appropriate tactical response for situations where a **subject is armed with a firearm** but circumstances may exist where the use of the TASER may be appropriate when deployed **with or in support of conventional weapons.**”*

Officer E reportedly told Officer D (her senior officer) to arm himself, and she stated, at Authority interview, that she was explicit with Officer D in this regard, *“because obviously the situation warranted one and I hadn’t been able to get one.”* As it was Officer E who believed that Officer A was in imminent danger, and that a firearm was necessary, she should have taken the time to obtain a firearm. While it cannot be said that Officer E’s failure to do so breached policy, the Authority considers that her decision-making lacked sound and reasoned judgement, and that she failed to exercise adequate caution.

- 82.3 Officer D** did not arm himself upon arrival at the golf course. At Police interview, Officer D stated, *“With Officer [E] possessing a Taser I felt we could move forward to try and make contact with Officer [A].”* The decision made by Officer D was ill-considered. At Authority interview, Officer D advised that he did not recall Officer E telling him to get a firearm. It was only when Officer E later ignored his instructions to retreat that Officer D returned to his vehicle to get a Glock. While Officer D should have informed CentComms that he was arming and retrieved a Taser at that time, the Authority accepts that he feared for the immediate safety of Officer E and he had valid concerns about the effectiveness of the Taser due to the layers of clothing he had observed Mr Morehu wearing.
- 82.4 Officers G and H** took a Taser with them from the Police station but, inadvertently, took the keys for a Police vehicle that had not been fitted-out with a lockbox to carry firearms or a Taser. They realised that there was no lockbox upon getting into the vehicle, but proceeded to the golf course without a firearm. Officers G and H should have ensured that they were equipped with firearms and ballistic body armour before driving off.

83. While all of the officers were aware that the incident involved a firearm, none of them put on their ballistic body armour. In omitting to do so, each of them failed to comply with Police policy and placed themselves at unacceptable risk of harm.

Training certification

84. As part of their officer training, Police recruits are trained in the use of approved defensive tactics, Tasers and firearms. Police officers are then required to participate in regular refresher training within their district, known as 'Police Integrated Tactical Training' (PITT) [although it is yet to be updated in Police policy, and is still referred to as its predecessor, 'Staff Safety Tactical Training' (SSTT)].
85. The SSTT chapter of the Police Manual, applicable at the time of the incident, details the principles and objectives of SSTT, and outlines expectations of officers with regard to SSTT attendance and certification, along with limitations for those who are not certified (see paragraphs 233-237). This chapter, along with the 'Police Firearms' chapter of the Police Manual, state that officers must hold a current SSTT certification for the firearm deployed.
86. At the time of the incident, Officer B had been a Police officer for nine years and, during this period, had regularly completed firearms training. However, Officer B's firearm certification expired on 23 May 2013, just over two weeks prior to the incident. At Police interview, Officer B described this as an "administrative issue". At Authority interview, Officer B advised that he had been unable to attend the training as he was on leave and was unsure why arrangements had not been made for him to be re-enrolled.
87. Police policy is also complemented by the District orders, applicable at the time of the incident, which state:

"It is the responsibility of each constabulary employee who may be placed in a situation that requires the carriage of firearms to ensure that their training certification for firearms remains current."

88. Police policy was amended in February 2014 giving a 'grace period' to officers whose certification has expired, as long as a booking has been made to attend training within 30 days from the expiry date. Even had this policy been in effect at the time of the incident, Officer B still would not have complied, as re-certification training had not been rebooked within the required timeframe.
89. Officers F, C and H also did not have current certification for the use of firearms at the time of the incident. Fortunately, this did not become an issue as Officers F and C remained at their original cordon positions and Officer H had no access to a firearm.

FINDINGS

Police were justified in arming themselves in response to this incident.

Officers G and H should have ensured that they were equipped with firearms and ballistic body armour before responding to this incident.

Officers B, E, D, G and H should have put on ballistic body armour.

Officer B breached policy by failing to ensure that his firearms certification was current.

THE TACTICAL RESPONSE

Issue 2: Was the initial tactical response to an armed Mr Morehu properly considered and appropriate in the circumstances?

90. Police policies on responding to armed offenders or *'active shooters'* (see paragraphs 211 and 212) emphasise caution, the use of voice appeal where possible, and acting in ways that minimise the risk of casualties. Specifically, the Police Manual advocates that, where possible, officers should establish a cordon to restrict movement into or out of the area in order to contain the offender and protect the public; they should then adopt a *"wait and appeal"* approach unless it is necessary to take immediate action to prevent casualties (see paragraphs 210-212).
91. In light of those policies, the Authority has considered whether Police should have attempted to cordon-off the area and contain Mr Morehu until back-up arrived. It must be acknowledged that these general duties officers, none of whom had previously had experience or substantial training in dealing with an armed offender, encountered a very complex set of circumstances. Indeed, the officers were faced with an active shooter, in an open area, in a semirural location, with negligible lighting, and minimal information about potential co-offenders and the status of one of their colleagues. Consequently, the Authority, with only the benefit of hindsight, has determined that it cannot make a fair and reasonable assessment as to whether cordon and containment was an appropriate and viable tactical option for Police in this situation.
92. The Authority accepts that those officers, faced with an active shooter situation, felt compelled to act. However, the Authority has considered Officer B's actions (following his interaction with the security guard) in approaching Mr Morehu with his weapon drawn and his subsequent retreat. The Authority has also considered whether Officer E had tactical options available to her other than entering the immediate scene, and then drawing her Taser and directly confronting Mr Morehu.

Officer B

93. From the time Officer B heard the gunshot and radioed CentComms, the option to wait until back-up arrived was available. Officer B made the radio transmission about the presence of an armed offender at the golf course without identifying himself or providing any other situational report. He then armed himself and approached Mr Morehu before retreating in response to the second shot that he mistakenly believed Mr Morehu fired at him. Officer B then ran up the driveway and turned off his Police radio.

94. The Authority considers that Officer B's actions and, indeed, inaction (as outlined in paragraphs 22-30) highlighted the absence of any tactical plan, did not comply with policy or good practice, lacked sound reasoning and judgement and, critically, put his colleagues at significant risk of harm. Officer B failed to comply with Police policy by omitting to inform CentComms of his arrival at the golf course and, subsequently, of his decision to arm himself given the events that unfolded. The Authority does not accept that Officer B did not have adequate opportunity during the period in question to report the circumstances to CentComms.
95. There were two serious implications resulting from Officer B's failure to provide a situational report and his decision to turn off his radio, and these impacted on the effectiveness of the Police response to the incident.
96. Firstly, Officer B was negligent in failing to clearly warn his fellow officers of Mr Morehu's position and of his belief that Mr Morehu had fired shots. This not only narrowed the tactical options available to them but impacted on their ability to make an informed and safe assessment of the situation, putting them at risk of serious harm or death.
97. Secondly, by turning off his radio, Officer B missed information vital to informing his assessment of the immediacy of the threat to his colleagues posed by Mr Morehu (such as how many other officers were present and what weapons, besides a Taser, they were armed with, or Officer E's advice that she could not see Mr Morehu in possession of a weapon). Ironically, Officer B's position overlooking the scene could have provided a significant tactical advantage to Police, had he not turned off his radio.
98. It is appreciated that Officer B's ability to perceive and process information would have been influenced by stress. However, Officer B failed to act in a manner that would be reasonably expected of an experienced, well-trained and professional Police officer. This meant that Officer B, essentially, put himself in a position whereby, when he decided to approach Mr Morehu and his colleagues, he did so without having exercised due care.

Officer E

99. Given that Officer B had not warned staff about the situation they were entering, the Authority is satisfied that Officer E was justified in attempting to make contact with Officer A, albeit armed only with a Taser. However, it would have been appropriate for Officer E and Officer D to have discussed a plan before doing so.
100. Upon reaching and speaking to Officer A, Officer E established only that shots had been fired. She did not enquire as to whether Officer A was injured and required medical attention. As outlined in paragraph 35, Officer E decided to engage Mr Morehu. At Police interview, Officer A stated, *"I chose to be there and accepted whatever happened to me to be my own responsibility, as long as I knew I had done something which I thought was helping Officer [A]."*
101. As referred to in paragraph 38, Officer D can clearly be heard three times on the Taser camera footage instructing Officer E to *"back off"* as she approached Mr Morehu. She failed to comply. At Police and Authority interview, Officer E indicated that she did not hear these

instructions, advising that she assumed Officer D was somewhere in the vicinity with a firearm but she did not know his location. At the latter interview, she stated, “*I didn’t have communication from him or anything.*” She further stated, “*...as soon as I’d jumped that fence and seen that guy it was all on, you know, like it was just emergency, no time for thinking, no discussions, just act.*” Officer E did not recall her radio transmission to CentComms in which she stated, “*I’ve backed off, I’ve fired my taser, I don’t know if I hit him, asked to back off by [Officer D].*”

102. Officer E indicated that under different circumstances, she may well have heard and responded to Officer D’s instructions. She stated, for example, “*...if he had appeared next to me and gone, “Look we’ve got to get out of here or we’ve got to...” You know, like, “I’ve got it covered or I’ve got a fire...” I don’t know, I, it would depend what he had on him, what he’d said, you know?”*
103. It is accepted that Officer E’s intentions were admirable and that she acted in the absence of any clear direction from Officer D or CentComms (command and control issues and the role they played in the absence of any tactical plan are discussed from paragraph 153). However, while the Authority considers that Officer E’s decision to proceed by confronting Mr Morehu with the Taser was courageous, her rationale for doing so was ill-considered. By confronting Mr Morehu, Officer E endangered her own life and that of her colleagues. Indeed, it is difficult to see how Officer E could have protected Officer A had she been seriously injured or killed by Mr Morehu. While the outcome cannot be known, opting to remain with Officer A would have reduced the risk of harm to the officers and provided more time for armed backup to arrive.

FINDINGS

Officer B should have provided CentComms with a situational report and warned his colleagues about the serious risk of harm posed by Mr Morehu. He was negligent in not doing so.

Officer B should not have turned off his Police radio.

The actions of Officer B and Officer E limited the tactical options available to other staff, and unnecessarily placed themselves and their colleagues at risk of harm.

USE OF FORCE

Issue 3: Was the force used by other officers during this incident justified in the circumstances?

104. All Police officers receive Police Integrated Tactical Training (PITT) in accordance with the ‘*Tactical Options Framework and Theory*’. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender (see paragraphs 197-201). Police officers make a ‘*perceived cumulative assessment*’ of the situation and subject behaviour. This is an assessment from the particular officer’s

viewpoint and informs the officer's response and type of tactical option that may be appropriate.

105. A number of tactical options were used by the responding officers during this incident. Officer B's use of a firearm is addressed in the next section. The actions of the other officers are examined in turn, below:

Officer A – Use of Police dog, empty hand tactics, and OC spray

106. Officer A suspected that Mr Morehu and Mr Bishell were responsible for committing the burglary at the golf club premises, and the pair was actively fleeing and avoiding apprehension, despite being challenged by Officer A. The Authority is satisfied that Officer A's decision to release his dog on them was justified.
107. Officer A reported, at Authority interview, that he was confident in his abilities and he saw an opportunity to "have a crack" at taking both offenders into custody. Officer A subsequently engaged with the offenders, completely unaware that Mr Morehu had a firearm in his possession. Mr Morehu's and Mr Bishell's actions (as outlined in paragraphs 14-16) required Officer A to use 'empty hand tactics' (see paragraph 198), OC spray, and the continued use of his dog, in an attempt to effect arrest and to protect himself and his dog. Officer A immediately re-evaluated the situation, and retreated, when it became clear that Mr Morehu had a firearm.
108. The Authority is satisfied that Officer A's use of force was justified.

FINDING

Officer A's use of his Police dog, OC spray, and empty hand tactics was justified.

Officer E – Use of Taser

109. Police use of Tasers is regulated by policy (see paragraphs 222-228), which states that officers may only use a Taser to arrest an offender if they believe on reasonable grounds that (i) the offender poses a threat of physical injury and (ii) the arrest cannot be effected less forcefully. Officers must have an honest belief that the offender is capable of carrying out the threat posed. Tasers should only be used against someone who is 'assaultive' (defined in paragraph 199).

(i) Initial Taser discharge

110. As discussed at paragraph 82.2, in spite of the circumstances as she understood them to be, Officer E decided to approach the scene without a firearm, and the Taser became the only viable tactical option for her to use (as her OC spray and a baton would not have provided safe or practical options under the circumstances).
111. As outlined in paragraphs 37 and 38, Officer E decided that she needed to divert Mr Morehu's attention away from Officer A onto her, and did so by issuing loud instructions while moving

towards him with the Taser pointed at him. Mr Morehu had been seen apparently searching for something in his bag or pockets, and had stated that he had possession of a firearm. Officer E stated, at Police interview, that during the course of the incident, Mr Morehu's level of aggression and agitation continued to increase and he failed to comply with instructions given by her.

112. The Authority finds that Officer E's decision to use the Taser was justified in the circumstances. She believed on reasonable grounds that Mr Morehu was assaultive, posed a real threat of physical injury and could not be arrested using less force.

(ii) *Second Taser discharge*

113. The Authority finds that Officer E's decision to discharge the Taser on the second occasion was also justified. Mr Morehu had continued to search through his bag or pockets, ignoring Officer E's repeated instructions to keep his hands where the officers could see them, and made further reference to having a firearm.

(iii) *Contact stun*

114. Section 39 of the Crimes Act 1961 (see paragraph 205) provides that Police can use reasonable force in the execution of their duty, such as using force to subdue a person resisting arrest. Officer E was entitled to use force to handcuff Mr Morehu given that he appeared, to her and her colleagues, to be resisting arrest.
115. The Authority considers that Officer E's decision to apply a contact stun to Mr Morehu once he had fallen to the ground was justified. While it could be argued that Mr Morehu's behaviour was not 'assaultive', as he was lying prone on the ground, it is evident that he was uncooperative and aggressive, and the use of the contact stun as a strategy to elicit compliance was a relatively low-risk tactical option.

Officer E – Use of empty hand tactics

116. As outlined in paragraph 51, when officers were prevented from securing Mr Morehu's right wrist because he was tucking his head into the crook of his elbow, Officer E punched him twice to force him to comply. At Police interview, Officer E stated that she hit him "near the top of his head...in the area of hard bone on his skull." She said, "I used either a closed fist or an open hand - I think the action was more like a thump rather than a full-force punch." At Authority interview, Officer E clarified that she used a closed fist.

117. At Police interview, Officer E explained her actions:

"I did this to try and cause him to flinch or move his head away from his arm, which would create space for those officers who were trying to get their hands between his arm and head to pull his arm back in order to secure it in a cuff."

118. The Authority has concluded that using empty hand tactics was justified, and there is no evidence indicating that the force used by Officer E was deliberately inflicted to cause injury.

FINDING

Officer E's use of her Taser and empty hand tactics during the arrest process was justified.

Officer G – Use of Taser

119. As Officer G approached the scene, he observed Mr Morehu throwing items from his bag. While Officer G therefore assumed it was unlikely that Mr Morehu was holding a firearm, he was concerned that Mr Morehu was attempting to retrieve a firearm or ammunition and was not complying with Officer E's instructions. Officer G stated, at Police interview, *"I considered the threat as high as it could be and feared death or grievous bodily harm for myself and my colleagues."*
120. Officer G decided that he needed to act immediately and, when he believed he was at an optimal distance for the Taser, he discharged it. Establishing that the Taser had been ineffective, likely due to the layers of clothing and the bag apparent on Mr Morehu's torso, Officer G reloaded and discharged the Taser at Mr Morehu's lower body.
121. As with Officer E, Officer G did not have a firearm and the Taser was the only viable tactical option available to him. The Authority is satisfied that Officer G's decision to use the Taser was justified.

FINDING

Officer G's use of his Taser was justified.

Officer H – Use of Police torch

122. As outlined in paragraphs 50 and 51, Officer H struck Mr Morehu four times in the head with his Police-issue Maglite torch. The Authority is satisfied that this was the cause of the injury adjacent to Mr Morehu's right eye (see paragraph 62).
123. Officer H's notebook entries, recorded at 9.00am on the day of the incident, state:
- "...[I] rushed in, knee on head to restrain – still couldn't see hands worried re: firearm in danger – [E] yelling give hands hit head with torch as not complying twice – then handcuff on offender lying on right hand [E] still yelling trying to pull hand I hit head again managed to drag arm up..."*

124. At Police interview, Officer H stated that he was concerned about the position of Mr Morehu's left arm, as it was extended out from his body but slightly bent at the elbow, and there was potential for him to reach for the firearm he had mentioned prior to the Police officers discharging their weapons. He further stated that Mr Morehu was not complying with Officer E's repeated instruction to give her his hand, at which time he struck Mr Morehu twice in the

head with his Police torch. He said, *“This was not a hard hit and I would describe it as a flick with my wrist. My reason for doing this was to gain pain compliance and secure his hands.”*

125. Officer H stated that after the handcuff was applied to Mr Morehu’s left hand he observed that Mr Morehu’s right hand was underneath his body, and was concerned that he might have been attempting to retrieve a firearm from where he had earlier been seen searching his clothing and bag (see paragraph 46). Officer H concluded:

“As he was not complying to Officer [E]’s continued request to “give me your hand”, I had attempted to extract his right arm without success and at this point I again hit the offender twice with my torch with the same wrist flick-type action to his head.”

126. At Authority interview, Officer H stated that he was relying upon sections 48 and 39 of the Crimes Act (see paragraphs 202.1 and 202.2) to justify his use of force. The Authority accepts, as with Officer E, that the use of force to effect arrest was justified. However, the Authority has given serious consideration as to the reasonableness of the force used by Officer H, and whether section 48 can be relied upon in these circumstances, particularly given the primary function of this type of torch is to assist searching in the dark or in poor lighting. In fact, the SSTT ‘Defensive Tactics’ training manual states that the torch *“has the potential to deliver fatal injuries,” it must be used appropriately in confrontational situations,” and “should be used as a defensive weapon of last resort when in a crisis situation only.”*

127. Officer H said, at Authority interview, that he was satisfied that there were no options available for restraining Mr Morehu other than using his torch. He stated:

“...the only reason I did that [strike Mr Morehu with his torch] is because he wasn’t complying with our actions, and in that situation he was still a threat to us and I guess it’s using pain compliance trying to get him to comply. So absolutely satisfied. I wasn’t going to be shot just because I didn’t do that. I believe that was necessary for him to comply with our actions.”

128. Officer H (having earlier formed the belief that Mr Morehu was in possession of a firearm) stated that he became concerned that Mr Morehu was attempting to retrieve the firearm, firstly with his left hand, and then with his right, and that this was his primary justification for using his torch to strike Mr Morehu in the head. However, there are some differing accounts given by the officers involved as to the position of Mr Morehu’s arms and hands during his arrest.

129. As outlined in paragraphs 50 and 51, Mr Morehu was lying prone on his stomach. Having considered all the material (including the information provided by the officers at Authority interview), the Authority has determined that Mr Morehu was not holding the firearm in his left hand. The Authority is also satisfied that, when Mr Morehu was struck with the torch for the third and fourth time (just after Officer E punched Mr Morehu in head), his right arm was *“extended over and around his head.”*

130. On a retrospective examination the Authority has determined that Mr Morehu did not pose a real threat of physical injury to officers while he was being secured. On that basis Officer H's use of his Police torch and, in particular, his striking of Mr Morehu on the head with it, was unnecessary.
131. However, that is not the test to be applied in determining the actions of Officer H. The initial question is, 'what did Officer H perceive the situation to be?' That question has to be considered with reference to the overall context of the situation. Officer H arrived at the golf course aware that Police were dealing with an armed offender and that shots had been fired; he approached the scene without ballistic body armour and was not armed with a Taser or Glock (issues upon which findings against him have already been made by the Authority); and he had a genuinely held fear for his own life and that of his colleagues. When all of that is taken into account the Authority is not able to reject Officer H's account that he believed Mr Morehu had the potential to access a firearm and he feared either he or another officer may be shot.
132. On the basis of that perception the Authority cannot conclude that Officer H's use of the torch amounted to excessive force.

FINDING

In the circumstances, the Authority is unable to conclude that Officer H's use of the Police torch to strike Mr Morehu in the head amounted to excessive force.

Issue 4: Was Officer B justified in shooting Mr Morehu?

133. The Authority has considered whether the lethal force used by Officer B was lawfully justified under the relevant provisions of the Crimes Act (see paragraphs 205-221 for relevant law and policy).
134. Before doing so, it is necessary to address the discrepancies relating to the number of shots fired by Mr Morehu and whether the firearm was still in his possession at the time he was shot by Officer B.
135. The physical evidence located at the scene, namely the cartridges and the firearm belonging to Mr Morehu, confirms that Mr Morehu fired only one gunshot before his firearm jammed. The Authority is satisfied, on the evidence before it, that this was the shot that was fired at Officer A, and that it occurred just as Officer B arrived, and prior to the arrival of any of the other officers, at the scene.
136. Officer B believed that he heard two gunshots shortly following his arrival at the golf course, and that the second of those was fired by Mr Morehu in his direction. Distinct from the gunshots that Officer B believed he heard, Officer E believed she heard Mr Morehu fire a gunshot after she had Tasered him the first time.

137. These events, as described by Officer B and E, are inconsistent with the physical evidence and with Officer A's account that, other than the shot that Mr Morehu fired at him, he did not hear any other shots fired until hearing those that, we now know, were fired by Officer B. While the Authority does not dispute that the officers' beliefs as to what they heard are genuinely held, they are clearly mistaken.
138. The Authority is also satisfied that, on the evidence before it, Mr Morehu was not holding his firearm at the time he was shot by Officer B, and that he discarded the weapon at some point following his unsuccessful attempts at reloading it. While none of the officers had, in fact, seen Mr Morehu holding a firearm during the incident, it is accepted that their concerns that Mr Morehu might have had a firearm on his person or might have been attempting to access a firearm from his bag were reasonably held.
139. Although Officer B never actually saw Mr Morehu holding a firearm, he was justified under section 48 of the Crimes Act in using force so long as:
- 139.1 the force he used was in defence of himself or another; and
- 139.2 the level of force was reasonable *in the circumstances as he believed them to be* [Authority's italics].
140. The starting point for consideration of self-defence is to assess what Officer B believed the circumstances to be from his subjective point of view at the time he shot Mr Morehu.
141. The second matter to be considered is whether, bearing in mind Officer B'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.
142. The third step is to ask whether, given Officer B'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 B 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.

What were the circumstances as Officer B believed them to be?

143. From the time Officer B was called out to attend the incident at the golf course, his assessment as to the level of risk to the safety of himself and his colleagues was based on the following:
- 143.1 The gunshot he heard shortly following his arrival at the golf course.
- 143.2 His belief that Mr Morehu also subsequently discharged a firearm at him.
- 143.3 His assumption that Mr Morehu was holding a firearm, based on Mr Morehu's posture and his belief that two shots had already been fired by Mr Morehu.
- 143.4 His observation that Mr Morehu was refusing to comply with the instructions given by Officer E.

- 143.5 His observation of Mr Morehu's aggressive demeanour directed at Officer E.
- 143.6 His observation that Officer E's use of the Taser appeared to be ineffective.
- 143.7 His observation that Mr Morehu appeared to be searching for a firearm or ammunition in his pockets.
144. On the basis of the above information, he believed that Mr Morehu was a very high risk to Police, and that the incident was likely to end in death or serious injury. Consequently, Officer B decided that it was necessary to take positive action rather than continuing to passively observe the situation.
145. As discussed above (see paragraphs 93 to 98), some of Officer B's earlier decision-making and actions fell short of acceptable practice, as a result of which his assessment of the situation was not as well informed as it should have been. However, at the time he fired the shots which killed Mr Morehu, he believed the circumstances were that:
- 145.1 Mr Morehu had shot at Police.
- 145.2 Mr Morehu had actively resisted arrest and was refusing to comply with Police orders to surrender.
- 145.3 Mr Morehu was facing Officers E, G, and H, and appeared to be attempting to retrieve something from inside his pockets.
- 145.4 Mr Morehu was reaching for a firearm or ammunition, and he intended to shoot the other officers.

Did Officer B fire the shots for the purpose of defending himself or another?

146. Officer B aimed for Mr Morehu's central mass and fired a single shot from his Glock pistol. Four seconds later, after determining that the first shot appeared to have had no discernible effect on Mr Morehu, Officer B fired a second shot.
147. It is clear that Officer B was using force in the belief that he needed to defend himself and his colleagues. In his Police statement, Officer B said:

"After the Taser was discharged I saw the male continue to stand. He continued to yell and be defiant. I felt that he was still a threat to us and our safety. His threat level had not reduced. I believed that it was the same as it had been when he shot at myself earlier...I fired the Glock after I raised it to my eye level, I did so believing that I had no other alternative to ensure the safety of my colleagues. I fired this round after observing that he had failed to comply with a clear direction issued by Officer [E], he had remained standing and seemed unaffected by the Taser's deployment, and he was reaching into his pockets for what I believed was to retrieve his firearm or ammunition for use against Officers."

Was the degree of force used by Officer B reasonable in the circumstances?

148. Police policy on firearms and use of force provides that officers should use the minimum force needed to achieve their purpose. Police General Instruction 'F061' sets out conditions which must be met before an officer fires on an offender (see paragraph 215).
149. One of those conditions is that Police call on the offender to surrender, unless it is impractical and unsafe to do so. Officer B did not do so. He stated, at Police interview, that he determined that it was not appropriate, as giving away his position may have "provoked" Mr Morehu into using the firearm he believed Mr Morehu had in his possession. The Authority accepts that this was appropriate in the circumstances as they were viewed by Officer B.
150. It must also be clear that the offender cannot be disarmed or arrested without being shot and that further delay in arresting the offender would be dangerous or impractical (see paragraphs 213-218 for relevant policy). In this case, Officer B believed that Mr Morehu had a firearm and posed an immediate threat of death or serious bodily harm. Police had asked Mr Morehu to surrender but he showed no signs of doing so. Instead, Mr Morehu confronted the officers, forcing Officer B to take action to apprehend him and remove the threat.
151. The Authority accepts that Officer B believed Mr Morehu needed to be incapacitated due to the threat he posed, and that shooting him was a reasonable level of force in the circumstances as Officer B believed them to be.

Conclusion regarding justification for shooting

152. In light of the circumstances described above, the Authority finds that Officer B believed that Mr Morehu posed an immediate threat of death or serious bodily harm to himself and his fellow officers, and that he was justified in firing the shots that killed Mr Morehu.

FINDING

Under the circumstances as he believed them to be, Officer B was justified in shooting at Mr Morehu in order to remove the threat of death or serious bodily harm.

COMMUNICATIONS, AND COMMAND AND CONTROL

Issue 5: Did Police comply with all requirements in respect of communications, and command and control during the incident?

153. Command and control is widely and variously described in the context of military and Police operations. In essence, command is the exercise of authority and direction by a properly designated commander for the purpose of accomplishing a task – and includes responsibility for effectively controlling the available resources for that purpose.
154. The actions of officers, as outlined in the sections above, raise serious questions about Police incident control and tactics in response to Mr Morehu's actions. These are addressed below.

Who was in charge?

155. The 'Radio Protocols' chapter of the Police Manual sets out Police communication requirements and incident control responsibilities (see paragraphs 185 to 192). That policy makes clear that the communications centre shift commander is responsible for leading the overall Police response until such time as incident control is formally handed over to a suitable officer in the field. Police policy clearly states the importance of clarity about roles and responsibilities when responding to critical incidents. The policy also emphasises that officers must be disciplined in their use of Police radio, in order to support clear communication and effective tactical decision-making.
156. The shift commander at CentComms in Wellington was alerted to the incident by the Police dispatcher assigned to the Taranaki channel when Officer B reported that there was an armed offender. He subsequently positioned himself next to the dispatcher. From that point, the shift commander, as the incident controller, was responsible for managing the Police response and formulating tactics.
157. Although Police policy is clear about the shift commander's responsibilities, and about the process for handing over command to the field supervisor, it is evident that the officers involved did not know who was in charge of the Police response during this incident.

Did the CentComms shift commander provide effective leadership of the Police response?

158. Regardless of who the officers believed was in charge, the CentComms shift commander knew he was the incident controller and the onus was on him to take command, assess options, and provide a plan for dealing with the armed offender.
159. CentComms staff gave instructions for the AOS to be activated, and prompted officers for information about the incident. But the shift commander (who only communicated through the dispatcher) did not at any stage assert his authority as the incident controller, provide tactical instructions to the officers involved, or convey a plan on how to deal with Mr Morehu. As a result, throughout this incident officers were making decisions or suggestions about tactics that were properly within the shift commander's area of responsibility.
160. Police policy requires that, when time and circumstances permit, all forward operations against armed offenders must be carried out by the AOS. In this case, the New Plymouth AOS was notified of the incident very soon after it was established that an armed offender was involved (although this information was not immediately relayed to responding officers), but were subsequently stood down when Mr Morehu was shot a short time later.
161. The shift commander accepted, at Authority interview, that he could have asserted himself better as incident controller. He stated that, due to the rapidly unfolding nature of the incident, he did not believe it was appropriate to hand over control to the sergeant, Officer D, although he said that he was relying upon Officer D to act as the forward commander.
162. In the Authority's view, the shift commander and his staff were hampered in their efforts to provide effective control of the Police response to this incident due to some of the actions of,

and the absence of clear communication from, officers at the scene (discussed above as part of 'Issue 2'). Specifically, CentComms were frustrated by the failure of units to confirm their locations, use their call signs, and provide the situational reports required to make appropriate decisions.

Did other officers fulfil their roles and responsibilities as part of the Police response?

(i) Officer D

163. In these circumstances senior staff in the field are expected to use initiative and take control of forward activities. While the officers who were interviewed by the Authority were extremely reluctant to criticise the actions of Officer D, it is evident that he demonstrated no presence, control, leadership or authority during this incident. Officer D also failed to follow the steps required of the senior officer present immediately after a firearm is discharged by Police (see paragraphs 220 and 221).
164. The Authority considers that the likely reason for these deficiencies was that Officer D was reassigned to GDB a month prior to this incident, having spent the previous 18 years in the Traffic Section and the Traffic Alcohol Group. His reassignment to GDB was part of a mandatory district-wide rotation process for supervisors. Officer D had not participated, or been given the opportunity to participate, in any training in preparation for his return to general duties.
165. At Authority interview, Officer D stated, *"I mean the operating procedures and the way they do work in the station now is just so totally beyond me, and I'm slowly catching up with it but it's going to take time."* He reported that he had been relying heavily on Officer C (left at a static cordon position during this incident), who had completed his sergeant qualifying courses and acted in Officer D's position while he was on leave.
166. Officer D made no radio transmissions following his arrival at the golf course and, apart from instructing Officer E to retreat, he demonstrated no behaviour which would have identified him as the senior officer at the scene. It is evident that Officer D was out of his depth and ill-prepared, and it is unsurprising that he was unable or unwilling to assert himself during this incident. It is also evident that allowances were made by other staff and, while they were sympathetic to his circumstances, he was not viewed by them as their superior or as a leader.

(ii) Officer I

167. In contrast, the leadership and composure displayed by Officer I, from his radio transmissions to his actions and decision-making upon arrival at the scene after the shooting, were clearly evident. An experienced GDB supervisor and AOS section leader, Officer I assumed the role of incident controller, complying with the requirements of policy relating to *'Police involvement in deaths and serious injuries'* (see paragraph 248). Although CentComms recognised that this was the case and was appropriate, the Shift Commander failed to designate Officer I as the incident controller.

168. It is also evident that the staff present, including those from Officer D's section, responded positively to the direction and leadership shown by Officer I upon his arrival.

Conclusion regarding communications, and command and control

169. Police communications, and command and control, during this incident were influenced by a number of factors. Officer B failed to provide information to CentComms and his colleagues that was critical to the effective management of this incident. The shift commander failed to assert his authority as the incident controller, assess options, and provide a plan for how to deal with Mr Morehu. The shift commander did not receive adequate support from Officer D, who was the supervisor in the field. As a result, Officers B and E made decisions (which were not properly with their area of responsibility) that put themselves and their colleagues at risk of harm.
170. In difficult circumstances such as these, it is expected that Police will respond in a professional and coordinated manner. However, the Authority considers that poor communication and lack of command and control contributed to the events that unfolded. While there may have been reasonable opportunities to remove Officer A from the scene, and to cordon and contain until the arrival of the AOS, the absence of adequate and cohesive command and control meant that such a strategy was not considered. This impacted on the effectiveness of the Police response to the incident.

FINDINGS

Police communication during this incident was poor.

The CentComms shift commander, as the incident controller, did not take command and exercise control according to policy.

Officer D did not use his initiative, as the senior officer in the field, and take control of forward activities. His inaction can be attributed to deficiencies in his training for frontline duties.

The absence of command and control resulted in field staff making decisions that put themselves and their colleagues at unnecessary risk of harm.

POST-SHOOTING

Issue 6: Was all reasonable assistance given to Mr Morehu after he was shot?

171. Officers immediately administered first aid to Mr Morehu once it was realised that he might be injured and was becoming non-responsive. Officers continued to provide assistance once paramedics had arrived. As outlined in paragraph 61, the wounds sustained by Mr Morehu were not survivable.
172. Notwithstanding Mr Morehu's survivability, it is evident that there was miscommunication around the fact that Mr Morehu had been shot. While all but one of the officers was aware

that shots had been fired by Police, the three officers attending to him were not aware that he had been struck until they noticed an apparent bullet entry wound to his lower back before the paramedics arrived. There appears to be some dispute about the extent to which this was discussed by the officers at the time, as Officer E says that she remained completely unaware that Mr Morehu had been shot (believing his presentation and the wound were the result of the Tasers) until she sought specific advice on the matter from her colleagues after it was queried by the paramedics.

173. While there is no doubt that the urgency of the situation was apparent from the numerous requests made by Police staff for the ambulance to attend as soon as possible, none of the officers provided CentComms with any sort of situational report or, specifically, informed them that Mr Morehu had been shot. It appears that attending officers assumed that paramedics were already aware of this fact upon their arrival because, critically, there was no handover and/or briefing given to paramedics about Mr Morehu's injuries. Paramedics continued (for approximately 25 minutes) to treat Mr Morehu for cardiac arrest until they confirmed that he had been shot.
174. The assistance given to Mr Morehu by Police officers was clinically appropriate, and awareness of the gunshot wounds would not have substantially altered the treatment provided to him by the paramedics. However, it is reasonable to expect that Police would have provided the paramedics with adequate and timely information about Mr Morehu's injuries. The Authority considers that the failure to do so is a further reflection of Police's poor communication and lack of command and control during this incident.

FINDINGS

Police and paramedics provided appropriate medical assistance to Mr Morehu, but the bullet wounds were not survivable.

Police's communication with the paramedics regarding Mr Morehu's injuries was poor.

Subsequent Police Action

EMPLOYMENT INVESTIGATIONS

175. As well as a criminal investigation into Police actions, Police have also recently completed a 'Practice, policy, and procedure' review to determine if the officers involved complied with Police policy and, if they failed to do so, whether any 'Code of Conduct' proceedings should be initiated. As a result, the Authority has been informed that Police are currently conducting employment investigations with respect to five of the Police officers involved in the incident.

Conclusions

176. The Authority has examined the Police response to the events at New Plymouth Golf Course on 8 June 2013, and has taken into account the complex nature of this incident. It accepts that, even under optimal conditions, this would have been a highly volatile and stressful situation for any individual to have been involved in.
177. The Authority has found that Police were justified in arming themselves in response to the incident. It has also determined that the use of the Police dog, OC spray, empty hand tactics and Tasers in an attempt to apprehend and arrest Mr Morehu was justified.
178. The Authority has also concluded that Officer B was justified in shooting Mr Morehu because he believed that Mr Morehu posed an immediate threat of death or serious bodily harm to Officer B and his fellow officers.
179. The most significant issues arising during this investigation, with regards to Police practice, concerned incident control and compliance with policy. The Authority has found that Police failed to comply with Police policy relating to the carriage of firearms, and responding to armed offenders and active shooters. It has also determined that the poor communication and lack of command and control demonstrated by Police during this incident contributed to the events that unfolded, and had a material impact on the effectiveness of the Police response to the incident.
180. It is essential that officers understand their respective roles and responsibilities when responding to critical incidents. In particular, it is essential that officers understand that it is the shift commander's role to formulate tactics and manage the Police response to any critical incident until that responsibility has been formally handed to a field commander.
181. It is also essential for officers who have access to Tasers and firearms to clearly understand and comply with the relevant policies, including the basic principles for responding to an armed incident set out in the '*Firing at offenders*' section of the Police Manual and policies concerning carriage and use of firearms.
182. There is no need for formal recommendations from the Authority in respect of these issues, as the existing policies are sound. The Authority would, however, encourage Police to take appropriate steps to ensure that all officers are appropriately trained, familiar with these policies, and understand the importance of complying.

Section 27 opinion

183. Section 27(1) of the Independent Police Conduct Authority Act 1988, requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
184. The Authority has formed the following opinions:

- 184.1 The failure of Officers G and H to ensure that they were equipped with firearms and ballistic body armour before responding to this incident was unjustified.
- 184.2 The failure of Officers B, E, D, G and H to put on ballistic body armour was unjustified.
- 184.3 Officer B's failure to ensure that his firearms certification was current was undesirable.
- 184.4 Officer B's failure to provide CentComms with a situational report and to warn his colleagues about the serious risk of harm posed by Mr Morehu was negligent and unreasonable.
- 184.5 Officer B actions in turning off his Police radio were unreasonable.
- 184.6 The actions of Officers B and E, which limited the tactical options available to other staff and unnecessarily placed themselves and their colleagues at risk of harm, were unreasonable.
- 184.7 The failure of CentComms shift commander and Officer D to demonstrate adequate command and control during the incident was unjustified.
- 184.8 The failure of Police officers to provide adequate and timely information to paramedics at the scene was unreasonable.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

19 February 2015

Applicable Laws and Policies

INCIDENT CONTROL & COMMUNICATION

185. The 'Radio Protocols' chapter of the Police Manual sets out communication requirements and incident control responsibilities when Police are 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."*

Incident control

186. Under the policy, the communications centre is responsible for the initial Police response to an incident. This responsibility to act as the 'incident controller' formally lies with the communications centre shift commander; although in practice a team leader or dispatcher is often delegated to take this role.
187. 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 shift commander (or by the delegated team leader or dispatcher). The shift commander 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"*.
188. 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 this 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.
189. Once incident control has passed to a field unit, the shift commander is still required to maintain active oversight of the Police response. This may include engagement with the 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 shift commander may take back incident control. One example of when this may occur is when the offender is mobile.

Radio protocols

Reporting

190. The radio protocols state that it is mandatory for units to immediately advise the dispatcher of their arrival at an event location.

Radio discipline

191. The radio protocols require that, during pursuits and major incidents, officers are disciplined in their use of Police radio. During the initial stages, only Police units involved should use the radio. Other units should listen but not make non-urgent requests for information or call to notify their location and availability. All units should immediately comply with directions from the communications centre.
192. This radio discipline is intended to support clear communication and effective tactical decision-making so the communications centre can fulfil its incident control role.

USE OF FORCE

General guidance on the use of force

193. The Police have a range of tactical options available to them to help restrain a person, effect an arrest or otherwise carry out lawful duties. These range from handcuffing and use of empty hand tactics to use of batons, OC spray, Tasers, carotid holds and firearms.

Manual of Best Practice

194. The Police Manual of Best Practice sets out the circumstances in which the use of force by Police is legally justified. This includes executing a process (such as a search warrant) or arrest, preventing escape, preventing suicide or injury, preventing breach of the peace, taking fingerprints, self-defence and defence of others, and a range of other lawfully justified circumstances. The Manual notes that an officer who uses excessive force may be civilly or criminally liable.
195. It also notes that, except in the case of self-defence, ‘reasonableness’ must be assessed objectively, *“that is, by the standards of the person on the street, and not the person using the force”*.
196. The Manual advises staff to *“remember that physical action taken too early may precipitate an even more violent situation”*.

Tactical Options Framework

197. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender. Officers may engage the offender (either immediately or later), or disengage, as appropriate in the circumstances.
198. If the offender is engaged, options range from communication to ‘empty hand’ tactics (such as escorting or distracting the offender, or kicking, punching or using a carotid hold) to ‘intermediate options’ (i.e. those unlikely to cause death or serious injury such as OC spray or baton) to use of lethal force (including firearms, baton strikes to head or neck, or empty hand strikes to the trachea, and intentional dislocations and breaks).

199. Which option is appropriate depends on whether the offender is:

- cooperative;
- resisting passively (i.e. *“refuses, with little or no physical action, to cooperate with the officer’s lawful direction”*);
- resisting actively (for example, pulling away, pushing, or running);
- ‘assaultive’ (defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”* – examples include kicking, punching or aggressive body language signalling an intent to assault; or
- presents a threat of death or grievous bodily harm (i.e. exhibiting actions *“that the officer believes are intended to, or likely to, cause grievous bodily harm or death to any person”* – for example, assault with a knife, blunt instrument or firearm).

200. Disengagement may be appropriate when “the consequences of continued police intervention seriously increase the danger to anyone”.

201. The framework’s guiding principles include: use of minimum force to reach an objective; and reduction of risk/maximising safety of Police staff.

CARRIAGE AND USE OF FIREARMS

Authorisation to carry firearms

202. The Police Manual authorises officers who hold the position of sergeant or above, and officers who are authorised by a district or communications centre supervisor, to carry firearms when there is *“clear and specific evidence”* that they may encounter circumstances in which they may be required to use a firearm in order to:

202.1 defend themselves or others, if they fear death or grievous bodily harm to themselves or others and cannot reasonably protect themselves or others in a less violent manner (section 48 of the Crimes Act); or

202.2 arrest an offender, if they believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting their arrest, and the arrest cannot be reasonably effected in a less violent manner, and the arrest cannot be delayed without danger to other people (section 39 of the Crimes Act); or

202.3 prevent an escape, if they believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person (whether identifiable or a member of the public at large), and the offender is fleeing to avoid arrest or is escaping after arrest, and

the flight or escape cannot reasonably be prevented in a less violent manner (section 40 of the Crimes Act).

203. If it is not practical to obtain any required prior approval, officers may exercise their discretion to arm themselves, but must advise the nearest communications centre and must advise their supervisor at the first reasonable opportunity. Officers must also take a Taser with them if one is available.
204. The Police Manual sets out the following requirements when officers arm themselves:
- 204.1 *Notification of Comms:* In any case where Police arm themselves to attend an incident, or are already at an incident and carry firearms, they must notify the communications centre that they are armed.
- 204.2 *Body armour:* Authorised ballistic body armour must be worn while a firearm is carried or when Police attend or expect to attend an armed incident.
- 204.3 *Fire Orders:* Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law, particularly sections 39, 40, 41, 48 and 62 of the Crimes Act 1961 (see paragraphs 205-208); General Instruction F061 (see paragraphs 213-215); and all relevant instructions and guidelines in the Police Manual. When firearms are issued, if time and circumstances permit, supervisors must draw officers' attention to the 'Fire Orders', which set out the circumstances in which Police officers may use firearms. These are printed on the inside cover of Police notebooks and are also stored in vehicle firearm security cabinets.

Crimes Act 1961

205. Section 39 of the Crimes Act 1961 provides authority for Police carrying out an arrest to use *"such force as may be necessary"* to overcome any force used in resisting the arrest, unless the arrest can be made *"by reasonable means in a less violent manner"*.
206. Section 40 of the Act provides authority for Police to use *"such force as may be necessary"* to prevent a person from escaping in order to avoid arrest, unless the escape can be prevented *"by reasonable means in a less violent manner"*.
207. Section 48 of the Crimes Act states: *"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."*
208. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Responding to armed offenders

Armed Offenders Squad

209. The Police Manual outlines the role of AOS in an armed incident. Where time and the offender's actions permit, all forward operations against armed offenders, particularly any direct approaches to the offender, must be carried out by AOS members assisted by the Police negotiation team (PNT). If the circumstances do not allow this, the senior officer in charge at the incident must take immediate steps to deal with the situation.

Principles for responding to armed offenders

210. The 'Firing at offenders' section of the Police Manual sets out the basic principles for Police responding to an armed incident:

"When dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:

- *It is better to take the matter too seriously than too lightly.*
- *Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.*
- *Make every effort to prevent casualties.*
- *Caution is not cowardice. When the offender's actions permit, cordon the area, and adopt the wait and appeal role in order to negotiate surrender.*
- *Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this."*

Active shooter incidents

211. An active shooter is defined as an armed offender who is discharging a firearm with "*reckless disregard or purposeful intent*", and who "*poses an immediate and serious threat to life within a defined area.*" Police policy states that, while every incident presents a unique set of circumstances, officers "*should never go unnecessarily into danger when responding to active shooter incidents.*" Best practice dictates that Police should take time to cordon and contain the area, and "*adopt the wait and appeal role to negotiate surrender.*" The policy states that deployment forward "*must be in a controlled, planned and coordinated manner*".

212. Policy also acknowledges that some situations, including those where there is immediate danger of casualties, may require action beyond a cordon and contain response and dictate the need for Police to act quickly to save lives. It specifies that, when deploying general duties officers, it is impossible to set in place exact procedures for every eventuality but that officers are "*expected to exercise their best judgment*" in applying the policy guidelines for responding to active shooters. Policy states that deployment in this regard should be aimed at "*locating, isolating and neutralising [taking positive action to prevent continued life threatening behavior] the threat*" and that the response should be immediate, proactive, and urgent.

Use of firearms

213. Police General Instruction F061 (Use of Firearms) provides that Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape, in the circumstances referred to in paragraph 202 and in accordance with the Crimes Act provisions referred to in paragraphs 205-208.
214. The instruction reminds officers that *“An overriding requirement in law is that minimum force must be applied to effect the purpose.”* It also says that: *“Where practical, Police should not use a firearm unless it can be done without endangering other persons.”*
215. General Instruction F061 directs that an offender is not to be shot until all of the following conditions have been satisfied:
- *“they have first been asked to surrender (unless it is impractical and unsafe to ask them)*
 - *it is clear they cannot be disarmed or arrested without first being shot*
 - *further delay in apprehending the offender would be dangerous or impractical.”*

Firing at offenders

216. The ‘Police Firearms’ chapter of the Police Manual contains a section on ‘Firing at offenders’. That section also reminds officers of the Crimes Act provisions and the need to use the minimum force necessary to achieve the objective. It states that the *“circumstances justifying Police firing at an offender can change very rapidly”*, and any officer who fires a shot *“must be personally satisfied there is justification for doing so”*.
217. The Police Manual reminds officers of the circumstances in which they are able to claim self-defence under section 48 of the Crimes Act, and states: *“There is no justification for firing at a suspect when they are no longer a threat to life. This applies regardless of the suspect’s previous actions.”*
218. The manual states that, as a general rule, warning shots should not be fired. However, a warning shot may be appropriate if: extreme caution is taken to safeguard the safety of others; the suspect has been asked to surrender (if practical) and has not done so; and the shot can be clearly aimed as a warning shot.

Discharge of firearms in operational situations

219. The ‘Police Firearms’ chapter of the Police Manual outlines what actions must be immediately taken when Police firearms are discharged in operational situations. The manual states that Police officers must complete a Tactical Options Report (except during training or when required to destroy animals) or a firearm is presented at a person but not discharged.
220. The manual also outlines the actions that must be taken by the senior officer present (or the officer appointed to do so), which includes:

- *Rendering first aid.*
- *Marking the position of the officer who discharged the firearm, the empty cartridge case/s, and other items or people associated with the discharge.*
- Securing the firearm and remaining rounds.

221. The manual notes, *“On no account is the firearm to be altered or items/accessories removed. It must be secured in the state at which it was at the time of firing.”*

USE OF TASERS

Use of Tasers

222. A Taser uses an electrical discharge to incapacitate a suspect. It works by preventing the suspect from controlling his or her muscles and motor functions.

223. The Police Manual of Best Practice states that a Taser is a *“less lethal”* weapon and is classed as an intermediate option according to the Tactical Options Framework.

224. According to the Taser manual, the likely result from using a Taser is that the suspect will immediately collapse to the ground and remain incapacitated as long as the Taser is being used. The Manual also states that there are no known long-term after-effects, and that recovery from a Taser stun should be almost instantaneous.

Before use

225. The manual states that, when presenting and before using a Taser, an officer should verbally warn the suspect unless it is impracticable or unsafe to do so.

Circumstances in which a Taser may be used

226. The Manual states that use of a Taser must be reasonable, proportionate, necessary and justified under relevant sections (31, 32, 39, 40, 41, or 48) of the Crimes Act 1961.

227. As a matter of principle, a Taser can only be used on a person who is ‘assaultive’ (see paragraph 199 for definition), or who is acting in a way that is intended or likely to cause death or grievous bodily harm. A Taser may not under any circumstances be used on a person who is uncooperative but otherwise non-aggressive, or who is using passive resistance.

228. The Manual also states that the Taser can only be used if the officer honestly believes the person is capable of carrying out the threat to cause harm, and furthermore may only be used for self-defence or defence of others, to arrest an offender, to resolve an incident in which a person is likely to injure themselves, or to prevent escape, and then only if the matter cannot be resolved through less forceful means.

USE OF OC SPRAY

Oleoresin capsicum spray

229. Oleoresin capsicum (OC) spray is used by Police to subdue people; it causes a stinging sensation and generally makes people very compliant so as to avoid further aggressive behaviour.
230. The Police Manual states that an officer must only use OC spray when it is *“lawful and reasonable i.e. necessary, proportionate to the situation, and with minimum risk to the public, police and the subject.”*
231. The policy states that OC spray may only be used on someone who is actively resisting and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, *“more than verbal defiance”*.
232. The policy requires that, before OC spray is used on a person, the person is warned that non-compliance will result in them being OC sprayed, the person is given a reasonable opportunity to comply, and other people nearby are warned that spray will be used.

TRAINING AND CERTIFICATION

Staff Safety Tactical Training (SSTT)/Police Integrated Tactical Training (PITT) programme

233. The Police Manual states that the training programme aims to ensure that Police officers are appropriately trained and equipped to undertake operational duties, consistent with the law and Police policy, in order to maximise the safety of staff and the public and to minimise risk to them.
234. The purpose of the programme is to provide Police officers with knowledge and skill in:
- *applying Police policy and procedures when dealing with incidents;*
 - *applying Police policy and the law on the use of force;*
 - *developing decision-making by applying the Tactical Options Framework effectively; and*
 - *using tactical options, including the effective and appropriate use of mandatory appointments, tactical techniques and safety equipment.*
235. The policy requires that Police officers maintain the currency of their firearms, defensive tactics and, where applicable, TASER certification by attending two firearms maintenance days every six months. A further maintenance day must be attended at approximately six weekly intervals for dry fire instruction.

236. Information about attendance and the certification status of Police officers is recorded on a Police training records database, which generates a message informing individuals and their supervisors of pending expiry of certification status relating to mandated training within 60 days and again within 30 days of expiry.
237. The policy requires that Police officers, whose certification lapses because they are unable to, or fail to, attend or complete the required training within the specified currency timeframe, give notice to their supervisor at the earliest practical opportunity. That supervisor must advise the district training coordinator so the employee's attendance can be re-scheduled.

USE OF POLICE DOGS

General Instructions

238. Under General Instruction D182, a dog handler is personally responsible for any use of force by that dog.
239. Before releasing the dog, the handler must be satisfied that the use of force is justified under the circumstances, and must call on the offender to desist unless it is impractical to do so.
240. The handler must also ensure that any force used by the dog is the minimum possible in the circumstances.

Manual of Best Practice

241. The Police *Manual of Best Practice* states that Police dogs may be used as a means of force to apprehend suspects and violent offenders who cannot be apprehended by other means.
242. Police dogs are trained to take controlled bites on the limbs and fleshy parts of the body in order to secure a hold on the suspect. Dog bites can cause damage to clothing, bruises, and more serious wounds.
243. Dogs cannot assess how much force is appropriate in a given situation. They may react independently according to instinct or training and should therefore be used as a last resort.
244. A handler using a dog must consider whether the use of force is justifiable and appropriate in the circumstances. They must also consider the possible consequences and whether there are other members of Police who could carry out the arrest.
245. Before releasing the dog, the handler should warn the suspect. However, in some circumstances – such as armed offender incidents – the suspect should not be warned.
246. Following apprehension, the dog should “generally” be removed as quickly as possible to avoid unnecessary injury.
247. If the suspect has been bitten, all possible steps must be taken to ensure that he or she receives medical attention as soon as practicable.

248. The '*Police involvement in deaths and serious injuries*' chapter of the Police Manual provides that Police must treat the scene (where an officer has caused death to serious injury to someone) as they would any other serious crime scene.

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.



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