



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

# Police use of a firearm during Whangarei pursuit

## INTRODUCTION

1. At approximately 3am on Friday 23 February 2018, Officers A and B saw a Nissan Maxima pull out of an intersection in rural Whangarei. Concerned about the manner of driving, they activated their patrol car's lights and siren to signal the vehicle to stop but the driver, Mr X, accelerated away.
2. Police pursued the Nissan, during which time Mr X rammed the Police car three times. Before the second ramming, the rear passenger presented what appeared to be a firearm at Police and Officer B fired a shot at him.
3. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

4. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.

### Summary of events

6. At the beginning of the night shift on Thursday 22 February 2018, Whangarei Police were briefed about a spate of recent burglaries and trailer thefts in the surrounding area. They were also given details of a family who were potential suspects and known to carry firearms.

7. During the briefing, Officer A read out the Police fire orders to his section.<sup>1</sup> Before leaving the station, Officers A and B (who were working together that night) advised their supervisor, Officer C, that they would equip themselves with Glock pistols due to the potential risk of encountering armed offenders. However, they did not put on ballistic body armour.<sup>2</sup>
8. At approximately 3am on 23 February 2018, Officers A and B were patrolling the rural Whangarei area when they heard over the radio that another officer was in pursuit of a Subaru being driven suspiciously. Due to the speed at which the vehicle was travelling, the officer could not maintain observation of the vehicle, so he abandoned the pursuit.
9. Officers A and B stationed themselves at the corner of Tokiri Road and Mangakahia Road with the intention of intercepting the vehicle or laying road spikes.<sup>3</sup>
10. However, due to his belief that local offenders were listening in on the Police's radio transmissions, Officer A made a tactical decision to broadcast over the radio that Police had left the area.

### *The pursuit begins*

11. At 3.03am the officers saw a Nissan Maxima pull out onto Mangakahia Road. The driver, Mr X, did not slow down or indicate as he approached the junction. He pulled out without checking the road was clear.
12. Although they knew this was not the Subaru involved in the earlier pursuit, Officers A and B decided to follow the Nissan, as they observed Mr X drive over the centre line. Officer A (who was driving) activated the patrol car's lights and siren to signal Mr X to pull over. However, Mr X accelerated away from Police, so the officers began a pursuit.<sup>4</sup>
13. Officer B notified the Police Northern Communications Centre (NorthComms) that they were in pursuit of a fleeing driver and provided the vehicle registration number. The NorthComms dispatcher issued the pursuit warning which Officer B acknowledged.<sup>5</sup>
14. Meanwhile, Officers A and B followed the vehicle along Mangakahia Road at speeds of 120kph. Officer B radioed NorthComms and said, *"If we could get more units... cos he's not gonna stop."*
15. The NorthComms shift commander (pursuit controller) directed units from Dargaville and Kaikohe to prepare road spikes in the surrounding area.<sup>6</sup> He also dispatched a dog handler to take an alternative route to intercept the fleeing car south-west of Whangarei.

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<sup>1</sup> 'Fire orders' are instructions which set out the circumstances under which Police may use firearms. Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape.

<sup>2</sup> Police policy requires officers to wear ballistic body armour – in this case, hard armour plating (HAP) over their standard issue Stab Resistant Body Armour (SRBA) – which provides additional protection of vital organs during incidents involving firearms.

<sup>3</sup> A tyre deflation device.

<sup>4</sup> Officer A was a Gold class driver authorised to engage in urgent duty driving and pursuits. Officer B was responsible for providing radio communications.

<sup>5</sup> The dispatcher advises the shift commander when a pursuit has commenced, provides the pursuit warning, maintains radio communications with the units involved in the pursuit, and communicates instructions from the pursuit controller. See paragraph 119 for the pursuit warning.

16. Officers A and B followed Mr X as he overtook two logging trucks (the only traffic on the road at that time in the morning). They estimated the fleeing driver may have reached speeds of 135kph to 140kph along this stretch of road.
17. Officers A and B saw the rear right passenger of the Nissan, Mr Y, intermittently hanging out of the window and throwing items. Officer A dropped back to about 40 metres behind the Nissan to avoid being hit by the objects such as torches, beer bottles, a scissor jack, and a gasket. Officer A later said: *"It was quite clear that the intention was to target the Police vehicle...."*
18. Officer B described the risk posed by the occupants of the fleeing Nissan:

*"At this stage they're definitely at the 'assaultive' level. I mean objects being thrown out of the vehicle... if one of those jacks had hit our windscreen... there's a high chance of death..."*<sup>7</sup>
19. Officer B said he then saw Mr Y brandishing *"something long and metal"* which he believed could have been a firearm. Officer A also saw Mr Y hanging out the rear right window holding an item. He said he initially thought it was the barrel of a firearm, but as they got closer he could see it was more likely to be a steel pole.

#### *First vehicle ramming*

20. Mr X turned left onto Karaka Road, an unsealed gravel road covered by trees on both sides which made it exceptionally dark at that time of the morning.
21. Officers A and B drove around a blind corner and saw the Nissan's brake lights and reverse lights illuminate. Officer A said it became clear the occupants were not going to stop and flee on foot, as he expected, as Mr X began to reverse towards the Police car.
22. Officer A said he stopped the Police car but it responded slowly as the brakes were hot and the gravel road reduced traction. He described it as *"huge lag, big delay"* which affected his ability to reverse quickly. The Police car came to a standstill 20 metres behind the Nissan, which subsequently collided with the Police car and then drove off down the road again.
23. Officer B radioed NorthComms to say Mr X had rammed the Police car causing minor damage. The pursuit controller told them to drop back by 200 to 300 metres.
24. Officer A noticed his driver's side headlight was no longer working, but believed the car was safe to continue driving, so he and Officer B continued to pursue the vehicle.

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<sup>6</sup> The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options.

<sup>7</sup> 'Assaultive' is defined in Police policy as 'displaying intent to cause harm, through body language/physical action'.

### Shot fired and second ramming

25. As they approached the Nissan for a second time, Mr Y appeared through the rear right window as it slowed down and stopped, which led Officers A and B to believe Mr X and Mr Y were going to run from the car. Officer A stopped approximately 150 metres behind the Nissan. Officer B opened the Police car door and stepped out of the vehicle but remained behind the car door with his right foot in the footwell.

26. Officer B said:

*"I remember looking up and there was a guy like 80 percent of his body out of the window and he was brandishing a firearm... It was a long firearm. I could see a long barrel pointed, it felt like directly at me."*

27. Officer A also recalled seeing Mr Y hanging out of the vehicle with his arms raised, brandishing what looked like the long metal barrel of a rifle. He took cover behind the steering wheel as he was concerned Mr Y was going to shoot and felt *"extremely vulnerable"*. Officer B, however, drew his pistol and fired one shot at Mr Y.

28. Meanwhile, Mr X reversed the Nissan towards them for a second time. Officer B got back in the Police car and *"braced up"* for the oncoming collision. He later said:

*"I kind of felt I had literally just dodged my death. Not only from the gun that was pointed at me but [also] the vehicle hitting [the Police car]. My main focus was the gun but yeah it quickly switched when I realised that vehicle was about to hit us."*

29. Officer B said he did not believe he hit Mr Y or that Mr Y fired a shot at him.<sup>8</sup> He advised NorthComms that Mr X had rammed the Police car a second time, *"this time at quite high speed"*. However, he did not notify NorthComms that he had fired a shot.

30. Officers A and B continued to pursue the Nissan but the Police car's right front tyre was damaged and deflating. Officer A drove slowly, intending to observe the Nissan until backup arrived.

31. However, as they approached the end of Karaka Road, Officer B could see Mr Y in the rear windscreen with his hands in a position imitating holding a firearm. On this occasion he could see Mr Y was not holding an actual firearm and Officer B did not fire his pistol again.

### Third vehicle ramming

32. Mr X rammed the Police car for a third time, and according to both Officers A and B, he did so more forcefully than the previous two rammings. Officer A said this collision caused significant damage to the Police car, with sufficient force to pop the fleeing Nissan's boot open. He said he felt the impact in his legs and was surprised the Police car's airbags did not deploy.

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<sup>8</sup> The officer's bullet cartridge was later found near where the incident took place. The offenders were not identified following this incident, but no one presented at hospital with a bullet wound.

33. Officer A continued to drive at a low speed to observe Mr X's movements but was not willing to engage again due to the condition of the patrol car. At 3.17am they lost sight of the vehicle and were unable to determine Mr X's direction of travel at the end of Karaka Rd.
34. At 3.20am Officer B notified NorthComms that they had abandoned the pursuit as the Police car was no longer safe to drive. Officer B said he did not advise NorthComms that he had fired a shot (on the advice of Officer A) but did say he had seen Mr Y gesture as if he was holding a firearm and said *"any staff involved just treat that with caution"*.

#### *After the incident*

35. The pursuit controller advised over the radio: *"Comms to all units ... no further pursuit to be initiated. Spikes approved as a tactical option."*
36. Meanwhile, Officer A requested that Officer C come to their location. Officer C advised that he was en route but was 10 to 15 minutes away.
37. Officer A said that, as they waited, he was concerned for his and Officer B's safety as they were isolated and alone in an immobilised Police car. He believed it was likely Mr X and Mr Y were still in the area and they were *"still a humongous threat"*, as they could *"ambush"* the officers.
38. On arrival, Officer B told Officer C he had fired a shot at an armed offender. As a result, Karaka Road was cordoned off for a scene investigation. The pursuit controller, however, was not made aware that Officer B had fired a shot until Officer C contacted him after the incident concluded.
39. Following the incident, the Nissan was not recovered and Police were unable to identify the occupants.

#### **Police investigation**

40. The scene was secured and the incident investigated by the Criminal Investigation Branch (CIB).
41. Officers A and B were breath screened for alcohol. No alcohol was detected.
42. The Police's pursuit review found that NorthComms managed the pursuit in accordance with the Police 'Fleeing Driver' Policy.
43. The Police investigation found that Officer B's discharge of the pistol was necessary, reasonable and proportionate in the circumstances and no criminal charges needed to be laid.

#### **THE AUTHORITY'S INVESTIGATION**

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44. As part of its investigation the Authority interviewed Officers A, B, and C, the dispatcher, and the pursuit controller. The Authority also monitored the Police investigation and reviewed all the documentation, including the NorthComms audio recording.
45. The Authority identified and considered the following issues:

- 1) Were Officers A and B justified in arming themselves with pistols, and were all procedures for arming complied with?
- 2) Did Officers A and B conduct the pursuit in accordance with the Police Fleeing Driver policy?
- 3) Was Officer B justified in firing his pistol at Mr Y?
- 4) Was NorthComms notified, in a timely manner, that Mr Y had presented a firearm and Officer B had fired his pistol?

## THE AUTHORITY'S FINDINGS

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### **Issue 1: Were Officers A and B justified in arming themselves with pistols, and were all procedures for arming complied with?**

#### *Were Officers A and B justified in arming themselves with pistols at the start of their shift?*

46. Police policy states that officers may carry firearms when their assessment of a situation is that it is “in, or is likely to escalate to be within, the death/grievous bodily harm range”. The policy also allows officers who hold the position of Inspector or above, or a District Commander or communications centre supervisor, to authorise officers to carry firearms when there is evidence to suggest they are likely to encounter a situation where firearms may be present.
47. 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. Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape.
48. Officers must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms, unless it is impractical to do so in that particular instance.<sup>9</sup>
49. At the beginning of the shift Officer A read out the Police fire orders. During the subsequent briefing the officers were advised of offenders who were likely to be in the area and known to carry firearms.
50. Officers A and B made the decision to arm themselves on the basis they may encounter firearms during the course of their duties that night. Officer C, their supervisor, approved their decision.
51. However, carriage of firearms is reserved for incidents in which officers find themselves at risk of serious harm or death. When they armed themselves at the Police station, they were not preparing to attend a specific incident in which firearms were believed to be present. Furthermore, neither Officer A nor Officer B notified NorthComms of their decision to arm, nor did they have authorisation from an Inspector. Therefore, the Authority finds that Officers A and B did not comply with Police policy and were not justified in arming themselves with pistols at the start of their shift.

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<sup>9</sup> For further information see paragraphs 124-132.

52. Police policy also requires officers to wear approved ballistic body armour when deploying to an incident where firearms are or may be present.<sup>10</sup> Since they were carrying firearms, they should also have worn ballistic body armour.

*Did Officer C follow correct procedure after Officers A and B armed themselves with pistols?*

53. Officer C said Officers A and B had advised him at the beginning of their shift that they were going to arm themselves and he had no concerns about them doing so in the circumstances. He did not know Officer B, as they had not worked together before.<sup>11</sup> However, Officer C had worked with Officer A for some time and trusted his judgement.
54. Officer C told the Authority there is no routine arming in the Whangarei Police, but fire orders are read out at the beginning of each shift. Officer C also said it is up to individual officers to do their own risk assessment and they do not need his permission to carry firearms. If his staff were looking for a specific individual or an incident occurred causing them to decide to arm themselves, then he would expect to be notified.
55. However, Officer C accepted that NorthComms are not always made aware when officers equip themselves with firearms. He also said that the information is not always escalated to an Inspector as:

*“...nine times out of 10 or sometimes 10 times out of 10 I’m the highest-ranking member of Police in Northland District so there is no one other than Comms, there’s no one else to tell.”*

56. Officer C is a sergeant. However, the NorthComms shift commander is usually a higher-ranking officer (often an Inspector). Irrespective of Officer C’s rank, to comply with policy officers must advise NorthComms when they carry firearms. This information must be made available to NorthComms so all tactical options may be considered accordingly; withholding such information prevents NorthComms from making an informed assessment of a situation.
57. In this situation, under Police policy Officer C did not have sufficient authority to approve carriage of firearms. He incorrectly believed that an officer has a sole discretion to deploy with firearms. Furthermore, despite Officer C’s knowledge of his staff arming themselves, he did not take appropriate steps to ensure NorthComms was notified.

## FINDINGS

Officers A and B were not justified in arming themselves with pistols at the start of their shift.

Officers A and B failed to comply with Police policy by not wearing ballistic body armour or notifying NorthComms when arming themselves.

Officer C did not follow correct procedure when Officers A and B armed themselves with pistols.

<sup>10</sup> See paragraph 132 for relevant Police policy.

<sup>11</sup> Officer B usually worked on a different section, he had been on leave and it was his first shift back.

## Issue 2: Did Officers A and B conduct the pursuit in accordance with the Police Fleeing Driver policy?

### *Justification to engage in pursuit*

58. At 3am, a Nissan pulled out of a junction in front of Officers A and B without indicating or slowing down. Officers A and B followed the vehicle onto Mangakahia Rd and observed it cross the centreline. Officer A activated the Police car's lights and siren to signal the vehicle to stop (the siren can be heard on the NorthComms audio recording), in accordance with Police policy.
59. Section 114 of the Land Transport Act 1998 provides that a Police officer may signal or request the driver of a vehicle to stop as soon as practicable and provide their details for traffic enforcement purposes. In accordance with section 114, the officers had the lawful authority, and reason, to signal Mr X to stop.
60. However, Mr X failed to stop and accelerated away. At this point Officers A and B decided to pursue the Nissan. The Authority accepts that they were justified in starting a pursuit because:
- Officers A and B were concerned about the Nissan driver's manner of driving.
  - The weather conditions were good and there was minimal traffic at that time of the morning.
  - Officers A and B were working in a high-risk area on a targeted patrol and were aware of recent thefts and burglaries in the area.

### *Continuation of pursuit*

61. Police policy states that unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the offender's identity is known. Officer B advised NorthComms of the registration and continued to pursue the Nissan until NorthComms could provide further detail about the vehicle. A minute after relaying the registration number, NorthComms notified the officers that the Nissan was registered to "*persons unknown*". As they were unable to identify the owner or the occupants of the Nissan, Officers A and B were justified in continuing the pursuit.<sup>12</sup>
62. The overriding principle of the Police fleeing driver policy is that "*public and staff safety takes precedence over the immediate apprehension of the offender*". Fleeing driver incidents must be managed in the safest possible manner and Police must constantly reassess the risks involved.<sup>13</sup>
63. Mr X reportedly reached a maximum speed of 140kph but mostly remained in the correct lane. Mr X overtook two logging trucks in a designated passing lane but neither officer considered these manoeuvres to be dangerous.
64. Officer A said he felt comfortable engaging in a pursuit travelling at speeds of up to 140kph in a 100kph limit. It was dark and the roads, with which he was familiar, were quiet.

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<sup>12</sup> See paragraph 122 for relevant Police policy.

<sup>13</sup> See paragraphs 113-123 for further information about the Police fleeing driver policy.



65. During his interview with the Authority, Officer A said Mr Y was continually throwing items out of the Nissan but he did not feel this warranted abandoning the pursuit. He said he felt in control of the distance between the Police car and the fleeing vehicle, and he intentionally held back to avoid being hit by items as *“taking one of those scissor jacks through the windscreen at, you know, over 120, 130ks... [would] probably take your head off.”*
66. The Authority is satisfied that Officer A’s knowledge of the area, his consideration of the risk, and the environmental conditions warranted continuation of the pursuit. Officers A and B complied with Police policy during the initial part of the pursuit.

### *Ramming of the Police car*

67. The officers pursued the Nissan for approximately twelve and a half kilometres along Mangakahia Rd before Mr X slowed down and turned left onto Karaka Rd. Officers A and B maintained a distance of 40 to 50 metres between themselves and the fleeing vehicle, concerned that more items may be thrown in their direction. The Nissan temporarily disappeared from view. However, as they drove around a corner they saw its brake lights and reverse lights illuminate. Officer A stopped and reversed accordingly but the gravel road reduced traction, which delayed changing direction. Mr X rammed the Police car for the first time.
68. The collision broke a headlight on the Police car, resulting in reduced visibility. Nonetheless Officer A felt he had sufficient visibility to continue.
69. Officers A and B also felt they needed to continue the pursuit, as the occupants and the Nissan’s owner were unknown. Officer A told the Authority he believed Mr X and Mr Y might flee on foot and he intended to follow them and apprehend them if they did so.
70. As Officers A and B approached the Nissan for a second time they observed the vehicle slow down and stop. Anticipating Mr X and Mr Y would flee, Officer B stepped out of the Police car once it too had stopped but remained behind the door.
71. According to Officers A and B, Mr Y hung out of the window aiming what appeared to be a firearm at the officers. Officer B drew his pistol and fired one shot at Mr Y.<sup>14</sup> He re-entered the Police car as the Nissan rammed it for a second time.
72. Officer B told the Authority that after the second ramming, he considered abandoning the pursuit. He said they did not *“formally”* abandon the pursuit but slowed down and followed the Nissan from a distance to maintain observations.
73. Police policy states that when an officer decides to abandon a pursuit, they must notify NorthComms and reduce their speed to increase the distance between the fleeing vehicle and their own. They must deactivate the patrol car’s lights and siren and stop as soon as it is safe to do so.

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<sup>14</sup> Refer to Issue 3 for further detail.

74. In this case, Officers A and B did not notify NorthComms they were abandoning the pursuit and they continued to follow the vehicle with lights and sirens activated. The Authority does not accept that it was the officers' intention to abandon the pursuit.
75. The officers drove slowly around another corner, as the vehicle was no longer handling well. Officer A said:
- "All I saw was, again, reversing lights and the rear of the fleeing vehicle ... right up on its spring, right up on its shocks ... high acceleration towards us, the back of the car sort of jacked up. I saw the car ... skid when it initiated reversing."*
76. Officer B said he saw the vehicle "coming at speed this time". He said he and Officer A braced for the impact, which he described as a "good whack."
77. The third ramming caused significant damage to the Police car and the officers decided it was no longer safe to continue. They subsequently lost sight of the vehicle at an intersection and were unable to determine its direction of travel.

#### *Concluding comments*

78. The Authority accepts that Officers A and B continued the pursuit after the first ramming as they had no alternative lines of enquiry to identify the occupants of the vehicle.
79. However, they were in an isolated location with limited radio or cell phone reception. This left them vulnerable to further collisions with Mr X and Mr Y, particularly if they became unable to contact, or receive transmissions from, NorthComms.
80. While there were other units in the area, assistance was not immediately available due to the distance. Given the time of day, there was also little risk to public safety, thereby decreasing the need to take immediate action to stop the Nissan.
81. Before the second ramming, Mr X presented what appeared to be a firearm at Officers A and B, increasing the risk of harm to both officers. However, the Authority accepts the officers had insufficient time to withdraw and abandon the pursuit in between Mr Y's presentation of a weapon and the second ramming.
82. While the Authority appreciates that the three rammings happened in quick succession, it considers that the pursuit should have been abandoned after the second ramming following Mr Y's presentation of a firearm. After the third ramming the Police vehicle was rendered inoperable, leaving the officers exposed to harm as they could not withdraw from the situation in the safety of the Police car if required.

#### **FINDINGS**

Officers A and B were justified in engaging in a pursuit.

Officers A and B complied with Police policy during the initial part of the pursuit.

Officers A and B should have abandoned the pursuit after the second ramming following Mr Y's presentation of a firearm.

### Issue 3: Was Officer B justified in firing his pistol at Mr Y?

#### *Assessment of Mr Y's weapon*

83. As Mr X reversed towards the Police car for the second time, Officer A told the Authority he saw Mr Y hanging out of the rear passenger window and presenting a firearm at the patrol car. During his Police interview he said, "at that moment I was 100% certain that it was a firearm", as opposed to the steel pole he had seen earlier.
84. Officers A and B both described seeing the metal pole before the Police car was first rammed and were clear that it looked distinctly different from the firearm. Officer B described the firearm as having a long, black, shiny metal barrel. He said the metal pole was silver and shorter than the firearm, and it was thrown from the vehicle before Mr Y's presentation of the firearm.
85. The apparent presentation of a firearm increased the officers' threat assessment and they both took evasive action. Officer A was sufficiently concerned for his safety that he sought cover behind the dashboard. Meanwhile, Officer B drew, aimed, and fired his pistol.
86. As the vehicle was never recovered and the occupants never identified, there is no available evidence to contest or verify the officers' accounts. Based on the available evidence, the Authority accepts that, on the balance of probabilities, Mr Y presented a firearm at Police.

#### *Acting in self-defence*

87. Officer B said he believed he was at risk of serious harm or death when Mr Y presented a firearm at him, and that he was acting in self-defence by firing his pistol at Mr Y, in accordance with section 48 of the Crimes Act 1961.<sup>15</sup> In order to rely on this defence, a person's actions must be assessed on a subjective and objective basis. This assessment involves three questions:
  - 1) What were the circumstances as Officer B believed them to be (subjective)?
  - 2) Was Officer B's pistol shot for the purpose of defending himself or another (subjective)?
  - 3) Was the force used reasonable in the circumstances as Officer B believed them to be (objective)?

#### *1) What were the circumstances as Officer B believed them to be?*

88. When he got out of the car, Officer B said he did not intend to use any tactical option as he anticipated chasing and arresting Mr X and Mr Y. Contrary to his expectations, Mr Y leaned out of the car window and presented a firearm at him as Mr X reversed towards them again. As a result, Officer B's risk assessment escalated to a risk of serious harm or death.

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<sup>15</sup> See paragraph 111.

89. Officer B told the Authority he believed the firearm was pointed specifically at him, and *“at the time I fired that round... I really felt I was gonna be shot and killed by a firearm.”*
90. The Authority accepts that Officer B feared serious harm or death when Mr Y presented the firearm at him.

*2) Was Officer B’s pistol shot for the purpose of defending himself or another?*

91. Officer B had stepped out of the Police car but remained behind the car door, which provided limited protection. When he saw Mr Y present a firearm he drew his pistol and fired one *“reactive”* shot in the direction of Mr Y. Officer B said: *“I believe it was necessary to respond [to Mr Y presenting the firearm]. I believe if I hadn’t responded that I was going to get shot.”*
92. The officers were close to the Nissan as Mr X reversed towards them (and subsequently rammed the Police car for a second time). Mr Y was therefore moving closer to the officers while presenting the firearm at them.
93. The Authority accepts that Mr Y posed an imminent threat to Officers A and B and is satisfied that Officer B fired his pistol at Mr Y in self-defence.

*3) Was the force used reasonable in the circumstances as Officer B believed them to be?*

94. The officers were in a remote location, without immediate back up. There were no suitable tactical options other than firearms available at the time, given the nature of the threat posed (a firearm) and the distance between the fleeing vehicle and the Police car. A Taser, baton or pepper spray would not have offered sufficient protection or had sufficient reach.<sup>16</sup>
95. Officer B fired one shot at Mr Y before re-entering the vehicle as it was rammed for the second time. Officer B said he did not have time to give a verbal warning as the threat was imminent: *“Had I decided to go with a verbal approach, I’m pretty confident I would have been killed... if not by the firearm, by the vehicle.”*
96. The Authority is satisfied that, in the circumstances, it was reasonable for Officer B to fire a single shot at Mr Y in response to Mr Y presenting the firearm at him in the manner and in the circumstances that he did.

**FINDING**

Officer B was legally justified in firing his pistol at Mr Y.

#### Issue 4: Were NorthComms notified, in a timely manner, that Mr Y had presented a firearm and Officer B had fired his pistol?

##### *Mr Y's presentation of the firearm*

97. After the third ramming, Officer B told NorthComms “[Mr Y] had his hands up in the shape of, as if he was holding a firearm, but wasn’t holding a firearm but was pointing you know, that kind of gesture.” However, neither Officer A or B advised NorthComms that Mr Y had actually presented a firearm at Police.
98. Officer B acknowledged during his interview with the Authority that his contact with NorthComms during the rammings was limited. He said this was due to concerns about his and Officer A’s immediate safety, and because he was focused on responding to the situation rather than relaying information to NorthComms.
99. Although Officer A was not directly responsible for radio communications, he acknowledged during his interview with the Authority that, in hindsight, he may have had time to contact NorthComms in between the second and third ramming to notify them that a firearm had been presented at Police.
100. Nevertheless, failure to provide information about the firearm increased the risk of harm to other attending units and limited the pursuit controller’s ability to formulate an appropriate tactical plan. The pursuit controller told the Authority that, had he been advised a firearm was presented, he would have told Officers A and B to move away from the vehicle, put ballistic body armour on, and wait for more units to attend.
101. The Authority finds that Officers A and B had critical information in their possession which they should have relayed to NorthComms. It accepts the incident unfolded quickly and that they did not have the opportunity to advise NorthComms of the presentation of the firearm before the second ramming. However, given Officer B contacted NorthComms to notify them of the second ramming (see paragraph 29) he could also have advised them of the firearm. As discussed in paragraph 56, this information would have been critical to the pursuit controller’s decision making.
102. The Authority considers that Officers A and B were negligent in failing to advise North Comms and their colleagues of the potential risk Mr Y posed, increasing the risk of harm to other officers attending the incident.

##### *Pistol discharge*

103. Officer B did not notify NorthComms that he had fired a shot. He initially said in his Police interview that this was on the advice of Officer A. Later in the same interview he said it was a conclusion they reached jointly.
104. Officer A said he thought it better not to advise NorthComms that Police had fired a shot, as he believed Mr X and Mr Y were likely using a radio scanner and did not want to alert them to the fact they had been shot at if they were not already aware. He thought that doing so could

*“aggravate”* the situation and felt that other officers in the area had been sufficiently briefed about their behaviour to be wary (see paragraphs 34 and 97). Officer A said he believed there was *“no point”* relaying details of the shot over the radio and it was best to wait until Officer C joined them.

105. When Officer C arrived, he did not immediately notify NorthComms over the radio that a shot had been discharged. He told the Authority he too was concerned that Mr X and Mr Y, or the local media, may have been using a radio scanner. He thought it safer to communicate via cell phone so he left the scene in his Police car to find an area with reception and call the on-duty Inspector and NorthComms. Consequently, the pursuit controller was not advised that a shot had been fired until approximately half an hour after the incident.

106. The pursuit controller told the Authority it was unacceptable not to broadcast the information that the shot had been fired. He said he should have been notified immediately so he could escalate the incident to the Armed Offenders Squad and consider requesting the Police helicopter (Eagle) to attend. The Authority agrees that Officers A, B, and C should have advised NorthComms as soon as possible, regardless of the possibility the offenders had a radio scanner.

#### FINDING

Officers A, B, and C should have advised NorthComms and their colleagues that Mr Y had presented a firearm at them, and that Officer B had fired a shot at Mr Y.

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## CONCLUSIONS

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107. The Authority has found that Mr Y presented a firearm at Officers A and B. The officers reasonably believed they were in imminent danger of serious harm or death and Officer B responded accordingly. Officer B was legally justified in firing his pistol at Mr Y in self-defence.

108. The Authority also concluded that:

- 1) Officers A and B were not justified in arming themselves with pistols at the start of their shift;
- 2) Officers A and B failed to comply with Police policy by not wearing ballistic body armour or notifying NorthComms when arming themselves;
- 3) Officer C did not follow correct procedure when Officers A and B armed themselves with pistols;
- 4) Officers A and B were justified in engaging in a pursuit;
- 5) Officers A and B complied with Police policy during the initial part of the pursuit;
- 6) Officers A and B should have abandoned the pursuit after the second ramming following Mr Y's presentation of a firearm;
- 7) Officers A, B and C should have advised NorthComms and their colleagues that Mr Y had presented a firearm at them, and that Officer B had fired a shot at Mr Y.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

20 June 2019

**IPCA: 17-1807**

### Law

109. Under section 114 of the Land Transport Act 1998 Police are empowered to stop vehicles for traffic enforcement purposes.
110. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
111. Section 48 of the Crimes Act states: “Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”
112. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### Fleeing driver policy

113. The overriding principle of the Police fleeing driver policy is that: “Public and staff safety takes precedence over the immediate apprehension of the offender”.
114. It is the responsibility of the lead vehicle driver, or Police passenger, to notify Police Communications as soon as practicable and when it is safe to do so, that a vehicle has failed to stop, the location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not a reason).
115. Under the Police ‘Fleeing driver’ policy, the pursuing officer[s] must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit. The assessment required of officers includes consideration of the following:
- a) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
  - b) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
  - c) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.



- d) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.

116. The TENR risk assessment must weigh up:

“... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.”

117. During a pursuit, warning lights and siren must be simultaneously activated at all times. The Communications Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.

118. The fleeing driver policy outlines that Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so). They must advise Police Communications of their location, direction of travel, description of the fleeing vehicle, and reason for pursuit.

119. Police Communications transmits pursuit warning to all vehicles involved: “{Call sign} if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge”

120. Officers are required to carry out risk assessments before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police car.

121. Fleeing driver incidents must be managed in the safest possible manner. A pursuit will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing. The fact that a driver is fleeing does not in itself justify engaging in a pursuit.

122. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the identity of the offender becomes known, the fleeing driver does not pose an immediate threat to public or Police, and they can be apprehended later.

123. Officers who decide to abandon a pursuit must notify NorthComms and immediately reduce their speed to increase the distance between the fleeing vehicle and their own. They should deactivate their lights and siren once below the posted speed limit and stop as soon as it is safe to do so.

### Firearms policy

124. The New Zealand Police is generally an unarmed service. However, it recognises that firearms need to be available quickly, easily and safely.

125. The Police Manual authorises officers who hold the position of Inspector or above, or a District Commander or communications centre supervisor to authorise officers to carry firearms when there is evidence to suggest they are likely to encounter a situation where firearms may be present.
126. Employees who carry firearms because their assessment of a situation is that it is in, or is likely to escalate to be within, the death/grievous bodily harm range, must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms, unless it is impractical to do so in that particular instance.
127. Policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm.
128. The policy instructs 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.”
129. Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law 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. Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape. These instructions are printed on the inside cover of Police notebooks and are also stored in vehicle firearm security cabinets.
130. An offender must not 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 that cannot be disarmed or arrested without first being shot; and*
  - *further delay in apprehending the offender would be dangerous or impractical.”*
131. Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law 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. Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape. These instructions are printed on the inside cover of Police notebooks and are also stored in vehicle firearm security cabinets.
132. When deploying to an incident where firearms are or may be present, officers must wear approved ballistic body armour, or hard armour plate (HAP) which must be worn over stab resistant body armour (SRBA).

### Who is the Independent Police Conduct Authority?

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

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

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

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

### What are the Authority's functions?

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

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

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

### This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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