

- Issue 2:** Was the incident correctly managed from Spaghetti Junction until Mr X left the motorway system at Manukau?
- Issue 3:** Was the officers' manner of driving in a residential area justified?
- Issue 4:** Was Officer E justified in deciding to fire at Mr X?
- Issue 5:** Did Police use excessive force to arrest Mr X?

The Authority's Findings

7. The Authority found that Officer E was legally justified in deciding to fire at Mr X to defend himself from being run over by the accelerating Holden.
8. We also concluded that:
- 1) Officer B appropriately assumed control and command of a serious and urgent situation.
 - 2) Officer B adapted his tactical planning to the changing situation, and avoided unnecessarily escalating the risk posed by Mr X.
 - 3) Officer B should have advised the Armed Offenders Squad of the situation earlier in the incident.
 - 4) The incident could have been managed under the fleeing driver framework from Spaghetti Junction onwards, but we do not criticise the response plan adopted.
 - 5) The attempted use of road spikes and block tactics were justified under section 40 of the Crimes Act 1961. However, the attempted use of pepper spray on a fleeing driver was unsafe.
 - 6) Police were justified in following Mr X through the residential area in Wiri, Clendon Park and Manurewa.
 - 7) Police mitigated the risks created by their own driving where possible.
 - 8) Officer E should have put on ballistic armour when he armed himself.
 - 9) Officer E fired three shots, while Mr X was driving past and away from him.
 - 10) Officer E should have used his cellphone to advise Officer B or the AOS Commander that he had fired at Mr X, when he could not communicate this information over the radio.
 - 11) Officer J was legally justified in using his Police dog to control and arrest Mr X.
 - 12) Officer L was legally justified in using his Taser to control and arrest Mr X.
 - 13) Police followed policy correctly when applying the spit hood to Mr X.

- 14) Mr X's complaints about being assaulted and verbally abused are unsubstantiated or able to be explained.

Analysis of the Issues

ISSUE 1: DID POLICE RESPOND APPROPRIATELY TO THE INITIAL NOTIFICATION THAT SHOTS HAD BEEN FIRED BY MR X?

Police called after shots heard

9. At about 3pm on 31 January 2019, Mr X had an altercation with Mr Y outside a house in Potter Avenue, Northcote. Mr X was reported to have fired a gun several times into the air, and once above Mr Y's head.
10. Officer A started driving towards a safe forward point on nearby Raleigh Street.¹ Officer B, the inspector in charge of the Northern Communications Centre (NorthComms) was alerted and stood beside the dispatcher monitoring the situation. He briefly passed incident control to Officer A.^{2 3}
11. At 3.19pm, Eagle started circling overhead. A minute later Mr X drove off in a red Holden Commodore. Eagle followed, having communicated the Holden's registration plate number and a description of Mr X.⁴ Eagle continued radio commentary of Mr X's movements. By this time the Police call taker had spoken to Mr Y, who reported the gun was a "small black pistol" and advised that, as far as he was aware, no one had been injured.
12. Officer B took back control and command of the incident, regarding it as a potential 'active shooter' scenario:⁵

"I formed the opinion right there and then that I had more of an active shooter type situation than I did anything else. The person had a firearm, they'd already discharged it, it was around people. He was now in a car, he was now – potentially he could go anywhere."

13. Mr X drove south along Lake Road, pulled into a petrol station at the intersection of Onewa Road and spent less than a minute putting petrol into the Holden. Officer B directed Officer C who had armed himself with a Glock pistol, to try to intercept and arrest Mr X. However, when Officer C pulled in behind the Holden and got out of the Police car, Mr X drove onto Onewa Road

¹ A safe forward point is a safe location near an incident, from which the forward operations can be supported.

² Dispatchers allocate Police units to attend incidents and pass on relevant information to the field units.

³ Control and command is the exercise of authority and direction by a properly designated commander for the purpose of accomplishing a task. It includes responsibility for effectively controlling the available resources for that purpose.

⁴ The Holden was registered to a person not matching Mr X's description.

⁵ An active shooter is an armed offender or offenders who are actively causing the immediate death or serious injury of multiple victims. The situation is not contained and there is substantial risk of ongoing danger to other persons.

and sped away. Mr X says he thought Police wanted to arrest him for breaching his bail conditions.

14. Eagle directed Officer C over the radio not to chase the Holden. Officer B says he agreed with this direction, which was why he did not override it.
15. Officer C waited 30 seconds before following Mr X onto the southbound motorway, staying approximately 1 kilometre behind. At times, he activated his Police car's emergency lights and sirens to move through the traffic and keep the Holden in sight.
16. Other Police units also followed the Holden at a distance but did not attempt to signal Mr X to stop. The NorthComms dispatcher directed the units to "*hang back*" and not to enter into a pursuit. Eagle continued following and gave radio commentary of Mr X's movements.
17. Mr X wove through traffic at speed over the Harbour Bridge, through Auckland, out towards Point Chevalier on the Northwestern Motorway and Great North Road, south-east towards Newmarket, and back through Auckland towards the North Shore. Primarily, he drove on the motorway. At times he drove on the wrong side of the road or the emergency shoulder to pass other cars. When able to get through traffic, his speed reached 150-170kph in a 100kph zone. All the while he was followed at a distance by up to three Police cars.
18. The NorthComms dispatcher directed officers to place road spikes on off-ramps as a tactic to stop the Holden.⁶
19. At approximately 3.45pm, Mr X turned off the motorway into Northcote. He drove through residential streets, often on the centre line or on the wrong side of the road to pass other cars, at speeds of up to 80kph in a 50kph zone.
20. The NorthComms dispatcher directed available units to set road spikes at intersections. Mr X drove slowly past the house on Potter Avenue, which by now was guarded by armed officers.
21. Mr X turned into Sylvan Avenue, slowed down and threw the pistol and two magazines onto a driveway. The magazines were recovered a short time afterwards by another Police unit, but the pistol was not found until the following day. It was only then that Police identified it as an imitation starter pistol which fired blank ammunition.
22. At approximately 3.50pm, Mr X reached the intersection of Sylvan Avenue and Onewa Road and drove through a bus stopping bay to push his way past the queued traffic, hitting one car. Officer D, in his marked Police dog van, and another marked Police car with emergency lights and sirens activated, unsuccessfully attempted to block him with their vehicles. Mr X turned onto Onewa Road and sped back onto the motorway travelling southbound.

⁶ Tyre Deflation Devices, commonly known as road spikes, are an approved Police tool used by officers to deflate the tyres of fleeing vehicles. See paragraphs 206-208 for relevant policy.

23. The NorthComms dispatcher directed officers to take up positions on off-ramps after the Harbour Bridge with road spikes, and radio their location.

Did Police respond appropriately?

24. As required by policy, Officer B immediately took control and command of the developing incident as information was provided first by a witness and Mr Y, and then by Eagle as it started circling. As Incident Controller, Officer B was responsible for directing the response and effectively controlling the Police resources to achieve the necessary outcome – in this case, safely arresting Mr X.
25. Officer B says he immediately judged the incident as extremely serious because the unidentified person was acting aggressively, had discharged a firearm around other people, and it was initially unclear if anyone was hurt. He assessed that Police needed to disarm and arrest the offender quickly as he posed a significant threat to everyone. To achieve this, Officer B passed control to Officer A to manage a response from a position close to the scene.
26. Before this could happen, Mr X drove off, increasing the threat to the public. Officer B took back control and command as he believed he was now dealing with a possible ‘active shooter’. The Authority notes that Mr X’s actions to that point did not meet the current definition of an ‘active armed offender’ as he was not *“causing immediate death or serious injury to multiple victims.”* However, Mr X certainly posed a significant threat as a person who had fired shots and was now driving erratically around Auckland.
27. Officer B says he developed plans as circumstances changed. In order, these were:
- 1) For Officer C to arrest Mr X at the petrol station. When this failed, he agreed with Eagle’s direction to patrol cars not to engage in a pursuit, as Mr X’s behaviour indicated he would not stop voluntarily.
 - 2) For Eagle to track the Holden while Police units hung back and waited for the Holden to run out of petrol. After about 18 minutes, it was apparent that Mr X had more petrol than first thought, and he started heading back towards the North Shore.
 - 3) For officers to use road spikes to stop the Holden, and particularly to stop Mr X returning to the Potter Avenue address, where both members of the public and Police officers were present.
 - 4) For officers to use road spikes on on-ramps and off-ramps once Mr X was southbound on the motorway, to keep him contained.
28. Officer B comments that his assessment changed as Mr X’s driving became more reckless and dangerous despite the fact that Police vehicles were not closely following him with lights and sirens activated. He remained concerned that Mr X was still armed, even though he had thrown out what looked to be the small black pistol seen earlier by witnesses. It was appropriate to take this cautionary approach.

29. We agree with Officer B's assessment of the risks involved. Officer B rightly judged that the Police response was urgent, but that Police needed to avoid escalating the situation by encouraging Mr X to act in a way that put more people at risk.
30. Officer B's tactical planning developed with the changing circumstances and attempted to use minimal force to arrest Mr X. This was in line with the Police's threat assessment methodology that applies to all policing situations involving risk and the potential to cause harm.⁷ The response to any given situation must be considered, timely, proportionate and appropriate.
31. Officer B says, on reflection, he should have advised the AOS of the situation at this earlier stage. We agree and think this might have shortened the overall incident. As it was, he notified the AOS Commander about 50 minutes after Police first became aware that shots had been fired in Northcote. At this point, Mr X was on the Southern Motorway passing Greenlane.

FINDINGS ON ISSUE 1

Officer B appropriately assumed control and command of a serious and urgent situation.

Officer B adapted his tactical planning to the changing situation, and avoided unnecessarily escalating the risk posed by Mr X.

Officer B should have advised the Armed Offenders Squad of the situation earlier in the incident.

ISSUE 2: WAS THE INCIDENT CORRECTLY MANAGED FROM SPAGHETTI JUNCTION UNTIL MR X LEFT THE MOTORWAY SYSTEM AT MANUKAU?

32. Several marked Police cars, including two AOS-trained Police dog handlers (Officers D and E) and Officer F on a marked Police motorcycle, followed Mr X at a distance of 300-400 metres using emergency lights to move through the traffic. As the dog handlers passed Victoria Park, they received an alert that the AOS had been activated and were preparing to leave Auckland Central Police Station.
33. At about 3.55pm, Eagle reported at least four Police cars following the Holden as it approached the area of motorway known as Spaghetti Junction. The dispatcher directed that all units other than the two dog handlers should disengage and take up a position at an off-ramp.
34. The traffic became heavy on all three motorway lanes and Mr X pulled onto the red chip emergency lane to pass other vehicles. When this lane ran out, Mr X manoeuvred the Holden through traffic on multiple lanes at low speed. Officers D and E (with emergency lights and sirens activated) and Officer F pulled in close behind the Holden as they passed Symonds Street.
35. Mr X alternated between weaving through slow-moving traffic at low speed, and bypassing traffic by driving on the merging or emergency lanes. Prior to the Gilles Avenue off-ramp he squeezed his Holden between two cars, sideswiping both, to stay ahead of the dog vans.

⁷ See paragraphs 187-190 for relevant policy.

36. The NorthComms dispatcher directed units to cover southbound off-ramps, and again directed units following the two dog vans to disengage.
37. Officer D was looking for an opportunity to draw in close beside Mr X and spray him with pepper spray through the open driver's side window. He had not done this before himself but had recently seen this tactic used effectively. Approaching Greenlane, Officer D unsuccessfully attempted this while the Holden was moving very slowly, advising over the radio: *"I just tried to spray him...."*
38. Shortly afterwards, at about 4pm, Officer E advised over the radio that he was AOS trained and would try to use his dog van to block the Holden in order to forcefully stop it. By this, Officers E, D and B understood he was going to try a blocking tactic similar to a non-compliant vehicle stop, with Officer D's support.⁸ The manoeuvre would not be a non-complaint vehicle stop, as not enough Police vehicles were present to execute the manoeuvre safely (three are required), and it had not been authorised by an AOS Commander as part of an AOS operation.
39. Officer B gave permission for the block tactic over the radio, but Officer E did not end up making such an attempt. Officer E says he got close enough to see that Mr X's eyes were wide open and had a *"crazed look,"* causing him to think Mr X was likely drug affected.
40. Mr X continued to weave through traffic, and speed past queued traffic when the opportunity presented. Officer D again announced his intention to attempt to use pepper spray but was unable to draw close enough to the Holden.
41. Near Ellerslie, Mr X increased his speed as the traffic decreased. He primarily drove on the red chip emergency lane, but also wove through fast-moving traffic, intermittently reaching speeds of 160-170kph. Officers D, E and F did not attempt to catch up to him, but maintained a distance of between 300-500 metres behind. A third AOS-trained dog handler, Officer G joined the group.
42. By this stage AOS officers were travelling south toward the incident. They continued to give location updates as they did so.
43. At 4.08pm, Mr X exited the motorway on the Airport link road and joined State Highway 20. He adopted the same manner of driving, weaving through free-flowing traffic and reaching speeds of 150kph. He exited the motorway at the Roscommon Road off-ramp, clipping a car and avoiding road spikes set on his approach to the intersection.

⁸ An Armed Offender Squad (AOS) or Special Tactics Group (STG) Commander may authorise a non-compliant vehicle stop during an AOS or STG operation, in situations involving a mobile armed fleeing driver *"where there is no other timely practical method of containing the fleeing driver or neutralising the threat they present"*. Only AOS or STG officers trained in its use may perform such a vehicle stop. It involves Police using their vehicles to force a fleeing vehicle to stop.

Could Police have managed the incident as a pursuit?

44. Up until this point, the incident had been managed broadly as an attempt to contain and arrest a mobile armed offender. The AOS had been called out to assist. This continued to be the overall response plan for the remainder of the incident.
45. Alternatively, we consider Police could have applied the fleeing driver policy framework to manage the incident from the point at which Officers D and E pulled closely behind Mr X with lights and sirens activated, onwards.⁹ Police have applied the fleeing driver policy in other incidents involving an armed offender.
46. The fleeing driver policy provides a framework for operating safely in what can become a volatile and unpredictable event. The framework requires active management of risk through a series of checks and balances, overseen by a single, objective point of control and command (the pursuit controller).
47. A 'fleeing driver' is a driver who has been signalled to stop by an officer but fails to do so. By the time Mr X had reached Spaghetti Junction he met this definition:
- Police had legal justification for stopping and arresting Mr X under section 9 of the Search and Surveillance Act 2012, as they had reasonable grounds to believe he had committed an offence punishable by imprisonment, by firing what looked like a pistol in public.¹⁰
 - Mr X would have been left in no doubt that Police wanted him to stop when Officer D (with lights and sirens activated) attempted to block him at the bus stop on Sylvan Avenue (see paragraph 22). This was only reinforced when two Police dog vans (with lights and sirens activated) drew in close behind him after Spaghetti Junction (see paragraph 34). In fact, Mr X says he was aware of the Police presence from the earliest stages of the incident.
48. The risk assessment and decision-making processes Police undertake when responding to an armed offender and a fleeing driver are based on the same threat assessment framework (TENR), set out in paragraphs 187-190.
49. Officers pursuing a fleeing driver must continuously assess the risks involved and decide whether they are justified in continuing to pursue. In the case of an armed offender, the assessment and response must take account of the high level of threat an armed offender poses to the public and responding Police. Where the public and responding officers are exposed to a high level of threat, Police are generally justified in using a higher degree of force in response to that threat.
50. The actions that Officer B undertook as the incident controller were similar to those he would have undertaken as the pursuit controller had he declared a pursuit. Similarly, Officer D's and E's actions during this incident were akin to those required of them under the fleeing driver

⁹ See paragraphs 197-205 for relevant policy.

¹⁰ Section 9 of the Search and Surveillance Act 2012 is set out in paragraph 186.

policy. Therefore, whilst it was open to Police to operate under the fleeing driver framework from Spaghetti Junction onwards, the alternative option they took was reasonable in the circumstances.

51. We do note, however, that some officers were confused about who was in command and control because most of the directions seemed to be coming from Eagle. Officer B's practice of only giving instructions over the radio when he disagreed with Eagle's commentary or directions meant that his presence and authority were not apparent to many officers during this incident. We consider that the use of the fleeing driver framework might have provided more clarity on who was in command and control, as Officer B would have assumed the role of pursuit controller.

Did Police consider appropriate tactical options?

52. Officers considered or attempted a range of tactical options during this phase. All say that the threat was so serious, it was imperative Police remained in close proximity to Mr X and stopped him if there was an opportunity.
53. Section 40 of the Crimes Act 1961 empowers Police to use "*such force as may be necessary*" to overcome any force used in resisting an arrest, or to prevent the escape of someone who takes to flight in order to avoid arrest.¹¹
54. Mr X was driving aggressively and dangerously in a powerful car to avoid arrest (see paragraph 13). Officers B, D and E say he presented a risk of death or serious injury, due to his behaviour and the fact he was potentially armed.
55. Police set up road spikes at on and off-ramps, intending to immobilise the Holden if Mr X attempted to leave the motorway. Road spikes are generally a tactic used within the context of a fleeing driver framework, when a fleeing driver has been given a reasonable opportunity to stop and with the authorisation of the officer managing the pursuit. In this case, although a pursuit had not been formally announced, both these elements had been met, as Mr X met the definition of a fleeing driver and Officer B had directed units to ready road spikes. We are satisfied that the use of road spikes was reasonable, proportionate and justified in the circumstances.
56. Officer D also attempted to use pepper spray on Mr X through his driver's window, to immobilise him sufficiently so he could be arrested. Pepper spray is a relatively low use of force, and therefore was proportionate and justified in the context of the threat presented by Mr X. However, we consider it a dangerous and ill-judged tactic to attempt when Mr X was in control of a moving car, surrounded by other motorists. Officer B says he did not hear Officer D mention using pepper spray over the radio at this stage, and if he had, he would have directed him to stop.

¹¹ Section 40 is set out in paragraph 183.

57. Officer B did, however, 'authorise' Officer E's plan to forcefully block and stop Mr X with his vehicle, with Officer D's assistance. Officer B says: *"I was trying to take affirmative action to deal with this situation and I think given what had transpired [it was] well and truly within reasonable force."* He assessed that, with two AOS-trained officers performing the manoeuvre, the risk of Mr X being able to escape and harm a member of the public was low. However, such a manoeuvre was outside the policy.
58. Although Officer B gave approval for the tactic, Officer E was responsible for deciding whether to initiate it. Officer E assessed the situation justified the tactic, tried to put himself in a position to execute it safely, but could not find sufficient clear space on the motorway. The Authority agrees that it was a reasonable tactic to contemplate in the circumstances. It was proportionate to the threat posed by Mr X and justified under section 40 of the Crimes Act 1961.

FINDINGS ON ISSUE 2

The incident could have been managed under the fleeing driver framework from Spaghetti Junction onwards, but we do not criticise the response plan adopted.

The attempted use of road spikes and block tactics were justified under section 40 of the Crimes Act 1961. However, the attempted use of pepper spray on a fleeing driver was unsafe.

ISSUE 3: WAS THE OFFICERS' MANNER OF DRIVING IN A RESIDENTIAL AREA JUSTIFIED?

59. At 4.10pm, Mr X drove south on Roscommon Road, through the first major intersection against the red lights. Eagle advised over the radio that they only had 5-10 minutes of flight time remaining (before needing to return to base to refuel).
60. For the next 13 minutes, Mr X drove approximately 12 kilometres through Wiri, Clendon Park and Manurewa, followed by officers:
- 1) Mr X turned left onto Wiri Station Road against the flow of traffic and accelerated to 100kph in a 60kph zone. Officers D, E, F and G followed with lights and sirens activated.
 - 2) About 500 metres from the intersection Mr X drove onto the central grass berm and made a u-turn, closely followed by Officer E. Officer E drove forward and contacted the Holden's A-pillar in an attempt to block and stop Mr X, but Mr X was able to accelerate away.
 - 3) Mr X turned left onto Roscommon Road and drove the wrong way on the two northbound lanes. He accelerated up to 100kph in the 60kph speed zone, swerving to avoid oncoming traffic and driving straight through controlled intersections.
 - 4) Officers D, E and G kept pace with the Holden on the correct side of Roscommon Road. They used the grass berm to move past stationary and slow traffic.
 - 5) At 4.14pm, Officers E and G planned a manoeuvre over the radio to force the Holden to stop, using their dog vans. However, Mr X turned right into Burundi Avenue.

- 6) Mr X drove through residential streets in Clendon Park at up to 80-90kph in a 50kph speed zone, straddling the centre line and driving on the wrong side of the road by cutting corners. Officers D and G followed close behind with lights and sirens activated.
- 7) At the Clendon Park roundabout, Officer G (having alerted Officer D of his intended actions) steered alongside the driver's side of the Holden and attempted to block and steer it to a stop. Mr X accelerated away. Officer G's dog van was damaged and he pulled over.
- 8) Officers E, D and F followed Mr X northbound on the correct side of Roscommon Road. Officer D then queried over the radio whether he should try to pepper spray Mr X, who had slowed to approximately 35kph. Officer B responded that he did not approve the use of pepper spray.
- 9) At about 4.18pm, Mr X drove on the central grass berm to avoid road spikes. Officers E, D and F remained on the correct side of the road and followed as Mr X turned right onto Burbank Avenue (a 50kph speed zone).
- 10) Mr X accelerated to 70-80kph and drove through the residential streets of Manurewa, near five schools. He cut through an intersection on the wrong side of the road causing oncoming traffic to swerve out of the way. The NorthComms dispatcher directed officers to place road spikes at key intersections.
- 11) At approximately 4.19pm, AOS advised over the radio that they had reached Roscommon Road. NorthComms relayed new information that the Holden had had a near empty tank when Mr X pumped a small amount of petrol, so he was likely to run out soon.
- 12) Mr X turned onto Station Road and slowed to 15kph. Officer E drove forward, nudged the rear of the Holden with his car and tried, unsuccessfully, to position himself to block Mr X.
- 13) Mr X forced his way onto the wrong side of Great South Road, where traffic was heavy and briefly boxed him in. Mr X turned into a shopping centre carpark, followed by Officers E and F, and then turned left onto Weymouth Road towards the intersection with Great South Road.

61. At this point Eagle radioed that it could only remain overhead for a further 1-2 minutes.

Assessment of the officers' manner of driving

62. Although not operating under the fleeing driver framework, the same risk assessment principles applied to the officers' decision-making and response.

63. The threat posed by Mr X was two-fold: his dangerous driving in a residential area at a busy time of day, and the fact that he could still be armed.

64. In considering their response, Officer B and the officers following Mr X needed to balance the immediate risks generated by following Mr X at speed and making attempts to forcefully stop the Holden, against the potential risks of letting him drive away and setting up cordons to contain him within a defined area.
65. In making this assessment, the overriding principle remained that public and officer safety was paramount, and every effort must be made to minimise harm and maximise safety.
66. Officer B says he never considered pulling the officers back at this point, because he felt duty bound to protect the public from the immediate risk posed by Mr X's extremely serious offending. He was more "*comfortable*" with managing the risks created by the officers following Mr X and attempting to stop him, than with leaving Mr X the opportunity to enter a public space and shoot or hurt someone, without Police close enough to immediately intervene.
67. Officer B says he expected the AOS-trained officers to eventually stop the Holden using blocking tactics and was comfortable with this approach. However, he maintained oversight and interjected when he did not agree with certain tactics, such as when Officer D proposed using pepper spray.
68. The dog handlers we spoke to also felt they needed to actively stop Mr X, or at least keep him within their range of control, because of the threat he posed as an armed offender.
69. Officer E says Mr X still posed a threat of serious harm or death to others, and people's safety was paramount. Mr X was driving "*like a bit of a lunatic*" in a powerful car and was clearly intent on causing some kind of harm, given his actions throughout the incident. He says his role was to contain Mr X, minimise the effect of his actions, and prevent potential harm by stopping and arresting him as soon as possible.
70. We think the risk assessment outlined in paragraph 64 was finely balanced as Mr X's driving posed a risk in itself. While we consider Police had alternative options to manage Mr X, for example by blocking roads to contain him in a defined area, with Eagle's assistance, they were not so compelling as to outweigh the option the responding officers took.
71. Without doubt, Mr X's driving posed an extreme risk to other road users and pedestrians. The Police vehicles also posed a risk, although the officers tried to mitigate this by keeping to the correct side of the road and using lights and sirens to warn others. Mr X and Police drove through five school zones, and past child-care centres, residential care facilities, places of worship and busy shopping areas, often above the speed limit, at a time of day when road and foot traffic was significant.
72. Mr X's behaviour indicated that he was not going to stop voluntarily and was prepared to use his car to force his way past motorists and Police vehicles to avoid being stopped. Officers made three attempts to block and stop him during this phase, all were unsuccessful as the Holden was too powerful.
73. Eagle was overhead to direct units into strategic positions. The AOS were close, announcing that they were passing Manukau as Mr X approached the Clendon Park roundabout.

74. Mr X was not actively threatening anyone with a firearm at this point and had not done so since the start of the incident.
75. However, allowing Mr X to move away from the dog handlers would have meant removing their ability to respond immediately if he did threaten members of the public with a firearm. Likely or not, this was a genuine risk and the consequences would have been extremely grave. Mr X's behaviour was erratic and aggressive, he had already fired a pistol in a residential area and Police simply did not know what his intentions were.
76. The area around Clendon Park and Manurewa was large and difficult to effectively contain without a large Police presence. Officer B directed available units to deploy road spikes at key intersections at Manurewa, but Mr X was able to bypass these.
77. While Eagle was still present, they were down to a maximum of 10 minutes flying time when Mr X turned onto Roscommon Road. Therefore, the ability of Police to keep observing Mr X from a distance was time-limited.
78. On balance, the potential risks at this stage made it appropriate for Police to follow Mr X, and attempt to stop him when opportunities arose. We make this finding on the basis that the officers took actions to mitigate the risk posed to others by their own driving where possible, by:
 - using lights and sirens;
 - not following Mr X onto the wrong side of the road; and
 - planning blocking manoeuvres as a team and making attempts at low speed when surrounding traffic was minimal.

FINDINGS ON ISSUE 3

Police were justified in following Mr X through the residential area in Wiri, Clendon Park and Manurewa.

Police mitigated the risks created by their own driving where possible.

ISSUE 4: WAS OFFICER E JUSTIFIED IN DECIDING TO FIRE AT MR X?

79. Before driving towards the Southern Motorway to follow Mr X, Officer E had removed his Glock pistol from the lock box in his dog van and holstered it. Information communicated over the radio indicated the offender was armed, so he assessed that it was appropriate to arm himself.
80. As required by policy, he considered the Police 'fire orders' (the circumstances under which an officer is justified in firing his or her firearm) and informed his sergeant that he was armed.
81. However, he did not put on his ballistic armour because he says it is too hard to drive in. We do not accept this is a valid reason not to use required safety equipment during a firearms incident.

82. At approximately 4.23pm, Mr X drove towards the Great South Road intersection on the wrong side of Weymouth Road, avoiding traffic stopped at the intersection. He suddenly executed a handbrake turn and spun 180 degrees in front of a raised concrete island, so he faced back down Weymouth Road with his back wheels on the island. Officer H had set road spikes across the intersection ahead of where the Holden stopped, and was standing on the raised island.
83. The footage recorded by the camera on Eagle shows the following sequence of events:
- 1) Officer E drives forward so the front of the dog van makes contact with the front of the Holden at low speed. Officer F stops his motorcycle to the left of Officer E's dog van, and dismounts.
 - 2) Officer E gets out of the dog van as Mr X reverses the Holden approximately a metre, hitting a metal pole.
 - 3) Officer E steps to the right of the open van door and raises his pistol with both hands towards the Holden. At most, three metres separate Officer E from the front of the Holden.
 - 4) Mr X accelerates towards Officer E. Officer E takes two steps to his right onto the pavement, and continues to aim the pistol at Mr X.
 - 5) Mr X drives through the gap between Officer E on the pavement and the dog van, narrowly avoiding Officer E. The Holden clips the open driver's door of the dog van, slamming it shut as it passes.
 - 6) Officer E continues to aim the pistol at the passing Holden.
 - 7) The Holden passes close to a marked Police car stopped behind the dog van, also slamming the driver's door shut. Officer E remains in the firing stance.
 - 8) Four seconds elapses from the time Mr X starts accelerating towards Officer E, and when the Holden passes the rear of the Police car stopped behind the dog van.

Mr X's account

84. Mr X has a different recollection of events, which he did not provide to Police or the Court. He says:
- He conducted a handbrake turn to avoid the road spikes.
 - Officer E "*smashed*" into the Holden, blocking him.
 - Officer E got out of the dog van, ran to his right and aimed his gun at him. He put his hands up, and Officer E fired four shots at him.
 - He "*freaked out,*" thinking he was "*gonna die.*" He put his head down and reversed the Holden.

- He drove forwards but swerved away from Officer E. He did not intend to hit Officer E, he just wanted to manoeuvre around the dog van: *"If I wanted to hit him, I would've just carried, carried on straight ahead, you know, I was already facing that way."*

Other officers' accounts

85. There were five officers in close proximity when Officer E fired at Mr X: Officer H, Officer F, Officer I (in the Police car that had stopped directly behind Officer E), and two dog handlers (Officers J and D) stopped behind Officer I.
86. Four of the five officers heard three shots. Officer F heard four shots.
87. Officers H, F and I say Officer E fired shots after the Holden accelerated towards him. Officers J and D could not see who fired the shots.
88. Officer H (standing on the traffic island) says Mr X accelerated off the island and the wheels initially failed to gain traction. Mr X accelerated again towards Officer E, who jumped out of the way to avoid being hit. At the same time Officer E fired *"2 or 3 rounds"* at the Holden. Officer E was about one metre from the Holden when he fired.
89. Officer I says he was standing beside his Police car when Mr X drove at Officer E, and:

"As I was looking at it, if [Officer E] had not moved the red Holden would have run him over, as it drove past [Officer E], [Officer E] fired about three shots at the offender's vehicle... towards the front of the vehicle."
90. Officer I says he then had to get back into his car quickly to avoid being run over. The Holden clipped the open driver door, slamming it shut.

Cellphone recording

91. A member of the public stopped at the Weymouth Road intersection recorded the events on his cellphone. The footage shows Mr X spin the Holden, and Officer E get out of the dog van and draw his pistol. A second Police car draws up and partially blocks the view of Officer E.
92. Four evenly spaced 'pops' can be heard as the Holden accelerates down Weymouth Road. The fourth 'pop' is softer and has a slightly lower register than the other three. All four sounds are heard within one second.
93. The first 'pop' is heard as the Holden is approximately parallel with Officer E's head, which is partially visible over the top of the second Police car.

Forensic evidence

94. After this incident, Officer E's pistol was seized as evidence. A Police Armourer examined it and established that three bullets were missing from the magazine.

95. Independent testing by the Institute of Environmental Science and Research (ESR) examined the bullet holes in the Holden made by Officer E's shots. Three bullet holes were located:
- 1) One in the rear left passenger door, close to the B-pillar and just below the window.
 - 2) One in the rear left passenger door handle.
 - 3) One about 10 centimetres above the rear left wheel.
96. The bullets from shots 1 and 2 were found trapped in the passenger door frame. The bullet from the third shot was not found (either in the Holden or at the scene).
97. The examiner formed the view that all three bullets travelled from the rear to the front of the Holden, and were travelling slightly downwards when they hit the vehicle. They were fired from a position towards the rear, left of the vehicle.
98. Although unable to conclusively determine the order in which the shots were fired, the changing angle of entry indicates that '1' was the first shot fired, and '3' was the last. This indicates that the shots hit the Holden as it was driving away from (rather than towards) Officer E.

Final view on the position of Officer E when he fired, and the number of shots fired

99. Police considered the possibility that a fourth shot was fired, based on the sounds heard on the cellphone recording. Examinations of the Holden, the firearm and the scene did not find any evidence of a fourth shot having been fired. Police concluded that the fourth sound was most likely an echo of a previous shot.
100. We examined the Eagle footage frame-by-frame and detected three muzzle flashes from Officer E's pistol, which correlate with the trajectory of the bullet holes found on the Holden. These three shots were fired within one second. Officer E was positioned on the pavement, parallel to the Holden's B-pillar for the first shot, parallel with the rear of the Holden for the second shot, and approximately two metres behind the rear of the Holden for the third shot.
101. We could not detect a fourth muzzle flash to correlate with the four evenly-spaced 'pops' heard on the cellphone footage.
102. On the totality of the physical evidence outlined above, we conclude that Officer E fired three shots, while Mr X was driving past and away from Officer E. Mr X's recollection that Officer E fired four shots at him before he reversed the Holden is incorrect.

Was Officer E legally justified in deciding to use his firearm to defend himself?

103. Section 48 of the Crimes Act 1961 provides legal justification for any person, including a Police officer, to use reasonable force in defence of themselves or another. Officer E says he decided to fire his pistol at Mr X in self-defence.

104. To rely on this justification for his use of force, Officer E's actions must be assessed on both a subjective and objective basis. The assessment involves three questions:

- 1) What did Officer E believe the circumstances to be at the time he decided to fire the shots?
- 2) Did Officer E decide to fire the shots for the purpose of defending himself or others?
- 3) Was it reasonable for Officer E to decide to fire his pistol at Mr X in the circumstances as he believed them to be?

What did Officer E believe the circumstances to be at the time he decided to fire the shots?

105. Officer E says that, immediately before getting out of the dog van and confronting Mr X, he believed Mr X posed a significant risk of serious injury or death to all those around him, because:

- Mr X had fired what was believed to be a real gun at a person in a residential area.
- He could still be armed.
- His driving was reckless and dangerous.
- He seemed at least ambivalent about harming others, having collided with several cars in order to get away, and driving at high speed on the wrong side of the road.
- He had refused to stop despite being aware of the increasing Police presence.
- An earlier glimpse of Mr X's eyes (see paragraph 39) and Mr X's overall behaviour indicated he was probably affected by drugs, and therefore *"not operating in reality."*

106. For these reasons he thought it was imperative that Mr X was stopped and arrested to prevent him from hurting or killing someone.

107. Having driven forward and made contact with the Holden, he believed the Holden had stalled and Mr X was *"trapped"* against the pole behind him.

108. He got out of the dog van and then realised Mr X was reversing. He says he yelled at Mr X to stop and stay, and brought his pistol up as a show of force, intending that Mr X would surrender in response.

109. Mr X started accelerating towards him, from less than two metres away. Officer E says he started moving to his right to get out of the way, but did not think he was moving fast enough to get out of the way in time:

"I tried to back up and out of the way as fast as I could but he was coming at me way quicker than I could move and I thought... I was going to die."

110. He says he decided to fire three *"continuous"* shots to stop Mr X driving over him and continued firing until he perceived the threat to him was over. He deliberately waited until Mr X *"was right on me,"* and aimed low to minimise the risk of hitting members of the public.

111. He says he aimed:

- 1) The first shot at the Holden's front left wheel, to force Mr X to turn or stop. He believed he saw Mr X put his left hand up and yank the wheel to the right in response.
- 2) The second shot through the front passenger door at the left side of Mr X's lower torso.
- 3) The third shot through the gap between the front and rear doors, at the back of Mr X's seat.

112. We must assess whether Officer E's beliefs were genuinely held in light of the ESR evidence and Eagle footage indicating that the three shots were fired as the Holden was passing or when it had already passed him.

113. We put the ESR evidence to Officer E and asked him whether he thought it was feasible that he had fired after the Holden had already gone past. He says it was possible given he had to respond in a "couple of seconds" and the Holden was moving past while he was also moving, aiming and shooting:

"So I mean... it's not gonna be perfect that's for sure. They're not, they're not perfect aimed shots because you just don't have time. You do your best."

114. We believe the difference between Officer E's perception of when he fired the shots and his actual position when he did so can be adequately explained by the speed of unfolding events and the pressure of the situation.

115. Because the timeframe was so compressed, it is likely that Officer E fired the shots in response to the position of the Holden as he perceived it to be a fraction of a second beforehand. He fired without processing in his mind that the Holden had now travelled past him.

116. The Authority is satisfied that Officer E perceived that the Holden was coming at him when he decided to fire, in spite of the evidence indicating that he fired after the Holden had passed.

Did Officer E decide to fire the shots for the purpose of defending himself or others?

117. Officer E says he fired shots at the driver "to try and make him turn or do something, just not hit me."

118. He also says: "I was exposed to the point that there was no going back, no delay, no aversion, I had to do it to defend myself... I fired three times... as an immediate response to his actions."

119. We accept that Officer E decided to fire the shots to defend himself.

Was it reasonable for Officer E to decide to fire his pistol in the circumstances as he believed them to be?

120. A suitably qualified officer may decide to use their firearm when they believe that someone is going to kill or seriously harm them or someone else. Police must give the person posing the

threat the opportunity to surrender if practicable, and use non-lethal tactical options to arrest or disarm the person if possible.

121. Officer E says he yelled at Mr X to stop. He also says pepper spray, baton and Taser were “irrelevant” as options because Mr X was sitting in a “metal cocoon” and therefore shielded from the effects of these tactics. He thinks the only other option was for him to try to get out of the way and let Mr X speed past, which he tried to do, but he did not believe he could reach safety in time. We accept that Officer E had no less-lethal tactical options to protect himself.
122. Officer E says he fired his shots in quick succession as the Holden sped towards him, stopping when he perceived the threat to him was over.
123. Police are trained to shoot until the threat is neutralised or incapacitated. However, firearms training emphasises the continual assessment of risk when firing. In some circumstances this requires reassessment after each shot, while in others, officers may be justified in firing a short burst of shots before reassessment.
124. In this case, as Officer E perceived the Holden was going to hit and potentially seriously injure or kill him, it was proportionate for him to fire in rapid succession until he believed that threat had passed. He stopped firing when he perceived the Holden was well past him. Although he says he saw Mr X yank the Holden’s wheel to the right after he fired the first shot, he did not have time to assess whether this movement would be sufficient to avoid hitting him. Consequently, it was reasonable for him to have fired the next two shots in quick succession.
125. The location and trajectory of the bullet holes on the Holden support the fact that Officer E was mindful of the risk to members of the public at the busy intersection, and tried to mitigate the danger by firing low and using his dog van as a shield for the stopped vehicles on the other side of the road.
126. Overall, we are satisfied that Officer E used justifiable force to defend himself from being run over by Mr X.

FINDINGS ON ISSUE 4

Officer E should have put on ballistic armour when he armed himself.

Officer E fired three shots, while Mr X was driving past and away from him.

Officer E was legally justified in deciding to fire at Mr X to defend himself from being run over by the accelerating Holden.

ISSUE 5: DID POLICE USE EXCESSIVE FORCE TO ARREST MR X?

127. Mr X accelerated down Weymouth Road, fishtailing and swerving towards another Police car. He had poor control of the Holden. Officer D (in front) and Officer J, another AOS-trained dog handler, followed.

128. Officer E says he could not advise that he had fired at Mr X over the radio because the channel was extremely busy. He did not use his cellphone to advise Officer B or the AOS Commander instead.
129. The AOS advised Officer B over the radio that they planned to join up with the two dog handlers and block the Holden. Officer B verbally approved the plan.
130. Mr X accelerated to 150kph and used the wide central median to pass other traffic. He slowed to negotiate the Clendon Park roundabout, a major roundabout with a large, grassed area in its centre. Officer D drove forward and hit the rear right corner of the Holden, causing it to spin around. Officer D steered it off the road, and the Holden rolled backwards down a grass slope into the middle of the roundabout.
131. Officer D got out of his dog van while the Holden was still rolling backwards and ran towards it with his Taser drawn. He assumed Mr X could still be armed and might need to be immediately incapacitated if he aimed a firearm. However, Mr X had opened his driver's door and had his hands up.
132. Mr X and Police have different accounts of the force used during Mr X's arrest and his aftercare at the scene.

Mr X's account

133. Mr X complained to us he was beaten and assaulted. He says:
 - He jumped straight out of the Holden and lay on the ground, giving himself up.
 - He was told to stop resisting, but he was not resisting.
 - An officer said: *"Give me a reason to blow your f***ing head away!"*
 - Officers beat him, set a Police dog on him and tasered him for a prolonged period while he was handcuffed.
 - The officers kicked his teeth out.
 - He dislocated his finger in the struggle.
 - He had to tell the officers he had Hepatitis to stop them beating him.
 - The officers said he was spitting at them and put a spit hood on him, but it was his teeth falling out and blood *"coming down my mouth."*
 - An officer deliberately poked his finger into his dog bite wound.

The officers' accounts

134. Officer D says he pulled Mr X out of the Holden and dragged him to the ground, so he was lying on his stomach.

135. Five officers were involved in physically restraining Mr X, and the AOS Forward Commander oversaw the arrest. They say Mr X was thrashing and struggling, screaming and swearing, and took considerable effort to bring under control. The AOS Commander says as soon as he saw Mr X on the ground, he could tell he was strongly affected by methamphetamine. Toxicology testing conducted after his arrest detected methamphetamine in Mr X's blood.
136. Officer D says he tried to pin Mr X's shoulders and control his right hand to apply handcuffs. Officer K (an AOS team leader, armed with an M4 rifle) quickly arrived and attempted to take control of Mr X's legs. He says Mr X's left arm was tucked under his body with his left hand at his belt line and at times Mr X tried to push himself up. Officer K was concerned he might be trying to reach for a gun or other weapon tucked into his clothing.
137. Eagle footage shows that Officer J and his Police dog also arrived, four seconds after Officer D dragged Mr X to the ground.
138. Officer J says he wanted to get to Officer D to provide cover and secure Mr X as quickly as possible. He had heard the shots fired at the Great South Road intersection and believed that Mr X (rather than Police) had fired the shots, and therefore presented a grave risk. He was also concerned that the AOS officers present might not know shots had been fired at that point, as they had not reached the intersection when the shots were fired and no information had been broadcast over the radio.
139. Officer J says he yelled a warning, telling Mr X to "*put [his] hands up*" or he would be bitten. He saw Mr X reaching down to his waist and was concerned he was reaching for a firearm. He was aware of another AOS officer to his right, but thought it unlikely that Officer D, positioned on the far side of Mr X, could see this movement.
140. Officer J knelt over his Police dog and directed it to bite Mr X, in an attempt to control his arm. The dog bit Mr X's rib area rather than his arm, so Officer J grabbed Mr X's arm and pulled it from under his body which was a "*massive struggle*." Another officer took over trying to control Mr X's arm. Officer J says he told the other officers to advise him when Mr X was fully under control, at which point he would remove the Police dog.
141. At the same time, a fourth officer was attempting to control Mr X's head and upper body, and a fifth officer was at his legs on Mr X's right-hand side.
142. Officer L (an AOS officer) approached and saw it was taking time to restrain Mr X. Mr X's left arm was not handcuffed, and he kept pulling his left hand forward towards his waist. The Police dog was still biting but did not seem to be effective in helping bring Mr X under control.
143. Officer K also saw that Mr X's left hand was uncontrolled and judged that more force was needed to finish putting handcuffs on Mr X, at which point he could be properly searched for a firearm. He called for one of the officers to ready a Taser.

144. Officer L activated his Taser and directed Mr X: *“Relax your arms or you will be tasered.”* Mr X continued to thrash and resist, so he applied a contact stun to Mr X’s left shoulder for five seconds.¹² Mr X stopped struggling to the point where he could be handcuffed.
145. Officer J says he removed the Police dog just before the handcuffs were applied.
146. Mr X remained agitated and aggressive. Two officers restrained Mr X while Officer L, a trained medic, provided first aid and packed the dog bite wound to stop it bleeding. Mr X was also bleeding from his mouth. One AOS officer noticed he had a cut lip.
147. Several AOS officers, and Officer N, a detective who placed Mr X under arrest, say Mr X started spitting, and his phlegm contained blood. Mr X had already stated he had Hepatitis, and this information was also recorded on the Police database. As Mr X was agitated, Officer N asked for a spit hood to be applied to Mr X for officers’ and paramedics’ safety.
148. The AOS Forward Commander who was overseeing Mr X’s arrest and care authorised Officer M to apply a spit hood. Officer M recorded that he applied the spit hood at 4.40pm.
149. Two AOS officers remained with Mr X while paramedics assessed him. Officer N and another officer travelled with him in the ambulance to Middlemore Hospital, arriving at 5.30pm. The spit hood was removed at 5.43pm. This information was recorded.
150. Mr X remained under Police guard while receiving treatment. He was released into Police custody the next day. His medical records noted:
- a 5 centimetre laceration from the dog bite and scratches on his left lateral chest wall;
 - a black left eye;
 - swollen lips, but no recent dental injuries;
 - a right wrist bruise from the handcuff; and
 - a swollen right ring finger.

Assessment of the use of force

151. To accurately assess risk and therefore judge an appropriate, proportionate response, officers must have access to relevant information. Neither Officer B nor the AOS Commander knew that Officer E had fired at Mr X.
152. Of the AOS officers involved in the arrest, only Officer D was aware that Officer E had fired at Mr X because he had witnessed it. Officer J, positioned behind Officer D, had heard the shots but assumed that Mr X had fired at Police.

¹² A ‘contact stun’ is the direct application of electrical current to a subject by pressing the Taser against the subject’s body.

153. Officer E says he attempted to communicate what had happened over the radio, but the channel was busy and he could not get his message through. He followed the other AOS officers to the roundabout and told the AOS Commander at the earliest opportunity.
154. While accepting Officer E made attempts to convey the information quickly, he could have used his cellphone to ring Officer B or the AOS Commander, rather than waiting to speak to the AOS Commander in person. This information was crucial for the officers attempting to arrest Mr X to know. In Officer E's assessment, Mr X had attempted to seriously hurt or kill a Police officer, and therefore posed an extreme risk which the arresting officers should have been aware of.

Use of Police dog

155. Section 39 of the Crimes Act 1961 empowers officers to use reasonable force in the execution of their duties such as arrests.¹³
156. Police may use Police dogs to apprehend offenders who cannot be apprehended by a less violent means. If practicable, the dog handler should warn the offender and give them a chance to comply with Police instructions before releasing the dog.
157. Officer J says he saw Officer D attempting to restrain and arrest Mr X, with another armed AOS officer approaching in support. He assessed that Officer D needed immediate help to secure Mr X, as Mr X posed a risk to the public if he was able to escape. He also thought Officer D was in a vulnerable position, struggling with an aggressive and potentially armed offender.
158. Officer J was particularly concerned that other officers were unaware shots had been fired immediately before and could not see Mr X's free left hand. He believed Mr X had fired those shots.
159. Officer J says he yelled a challenge at Mr X as he ran towards him, but Mr X did not stop struggling. He says Mr X appeared to reach for his waistband, and he judged that he had to respond immediately to prevent Mr X reaching for a potentially hidden weapon.
160. He considered yelling a warning to Officer D, so he could consider using his Taser, but thought it would take too long for Officer D to understand his warning and react for this to be a safe option. He considered using pepper spray but judged that it may not have a strong effect on Mr X and could also adversely affect the officers trying to bring him under control.
161. Therefore, Officer J directed his Police dog to bite Mr X. However, Officer J says Mr X became more aggressive and refused to put his hands behind his back. He removed the Police dog after Mr X had been stunned with the Taser and relaxed his arms.
162. The Eagle footage of the arrest stops before the Police dog is obviously removed, but shows the dog was biting Mr X for at least 43 seconds. On its face, this is a considerable period of time.

¹³ The section is set out in paragraph 182.

163. It is not possible to confirm from the footage whether Mr X is struggling throughout this period, as the officers holding him obstruct the view of his body. However, we spoke to several officers involved in Mr X's arrest, including two AOS supervisors, and all say Mr X continued to struggle strongly and was very hard to control, even after the dog started biting and other officers arrived to assist.
164. We accept the officers' version of events including the length and intensity of the struggle. These factors, combined with the strong possibility Mr X had retained a pistol, put this situation out of the ordinary. We also note the restraint of Mr X and the arrest itself was overseen by the AOS Forward Commander. On this basis, we are satisfied that Officer J was justified under section 39 of the Crimes Act to command the Police dog to distract Mr X to help bring him under control, because:
- Mr X remained a threat until he was secured and searched, so it was reasonable for Officer J to believe he could be armed with a pistol based on the information communicated at the start of the incident, and the gunshots he heard.
 - Mr X resisted initial efforts to restrain him, ignored Officer J's warning and made movements reasonably interpreted as reaching for something in his belt.
 - Officer J considered less forceful options, but we agree that, given the threat, they were not practical.

Use of Taser

165. An officer may only use a Taser if they believe a person poses an imminent risk of physical injury to another person. The officer must first issue a warning if practicable.
166. In this case, Officer L assessed that Mr X was not under control, despite the efforts of officers and a dog to restrain him. He was still able to move his left hand towards his waistband, which Officer L perceived as a risk for the same reasons articulated by Officer J. Officer L believed Mr X posed a significant risk of serious harm or death to officers and the public if he was able to reach a hidden weapon, or escape from Police, due to his prior behaviour.
167. Officer L issued a warning as required, which Mr X did not comply with. The TaserCam footage shows Officer L applying the Taser for approximately five seconds as described, and officers applying handcuffs afterwards.¹⁴
168. The use of the Taser was reviewed by senior officers after this incident, as required by policy.
169. Ordinarily, we would be concerned about the use of a Taser, together with a Police dog and several officers to bring one man under control. However, as previously stated, we accept that this situation was out of the ordinary.

¹⁴ A Taser has an inbuilt video camera (TaserCam) which activates automatically when the Taser is turned on.

170. In these circumstances, we find the use of the Taser was justified under section 39 of the Crimes Act, because we accept the officers reasonably believed that Mr X still posed a risk of imminent, serious harm. His left arm was not secured and it was unclear whether he was armed with a weapon. The brief use of a Taser was a proportionate response following a prolonged struggle.
171. Officer L issued an appropriate warning and did not apply successive or extended discharges of the Taser as Mr X alleged. Police provided appropriate aftercare to Mr X after he was secured.

Mr X's complaints

172. Mr X made concerning allegations about his treatment during his arrest. We put Mr X's allegations to nine officers involved in the arrest, and all denied assaulting or verbally abusing him.
173. As discussed above, we are satisfied from the officers' accounts that Mr X did resist strongly, and that Police applied force only up until he was brought under control and handcuffed.
174. We have not found any evidence to support the allegation that Mr X was verbally threatened or beaten.
175. When interviewed several months after this incident, Mr X did have missing teeth. However, it is not clear that this happened when he was arrested. His medical records from the time do not refer to a new dental injury. No photographs of Mr X's open mouth were taken when he was in hospital or taken into custody, and no loose teeth were found at the roundabout during the scene examination.
176. Medical records show Mr X had swollen lips after his arrest (indicating a mouth injury), and he himself says he told officers he had Hepatitis. Several officers said he was spitting phlegm with blood in it, and he was also bleeding from the mouth. This posed a risk to officers and medical professionals.
177. Policy provides that a spit hood must only be applied with a supervisor's approval, and must not be applied if a person is bleeding "*profusely*" from the mouth or nose. The person must be watched constantly while wearing the hood, and should not wear it for longer than two hours without medical assessment.¹⁵
178. In this case, the appropriate authorisation and observation requirements were fulfilled. Mr X wore the spit hood for just over one hour, and the relevant time of application and removal were recorded. Throughout this time, Mr X was observed by medical staff or officers.
179. Mr X was bleeding from the mouth area when the spit hood was applied, but officers' accounts do not indicate that there was a large volume of blood, sufficient to create a breathing or choking

¹⁵ The policy is set out in paragraphs 209-213.

hazard. Officer L, who provided first aid, did not note any significant mouth injuries when he assessed Mr X. Mr X does not say that he had any difficulties while wearing the spit hood.

180. Mr X's complaint that an officer deliberately poked his wound to cause him pain was likely part of normal first aid procedures, such as checking and packing the wound.

181. Mr X may believe his own account of events, but he is not a reliable witness as he was drug-affected at the time. On balance, we prefer the officers' version of events and are satisfied that Mr X's complaints are unsubstantiated or able to be explained.

FINDINGS ON ISSUE 5

Officer E should have used his cellphone to advise Officer B or the AOS Commander that he had fired at Mr X, when he could not communicate this information over the radio.

Officer J was legally justified in using his Police dog to control and arrest Mr X.

Officer L was legally justified in using his Taser to control and arrest Mr X.

Police followed policy correctly when applying the spit hood to Mr X.

Mr X's complaints about being assaulted and verbally abused are unsubstantiated or able to be explained.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

9 September 2021

IPCA: 18-1635

Appendix – Laws and Policies

LAW

182. 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.”*
183. Section 40(1) of the Crimes Act states:
- “Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—*
- (a) to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or*
- (b) to prevent the escape or rescue of that other person after his or her arrest—*
- unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner...”*
184. 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.”*
185. Under section 62 of the Crimes Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.
186. Section 9 of the Search and Surveillance Act 2012 empowers Police to stop a vehicle without a warrant to arrest a person if they have reasonable grounds to believe that that person has committed an offence punishable by imprisonment.

POLICY

Risk assessment (TENR: Threat-Exposure-Necessity-Response)

187. Police must apply TENR assessment methodology to all policing situations that involve risk and have the potential to cause harm. TENR assessments must be carried out in conjunction with the relevant Police manual chapters or policy.

188. The Police threat assessment methodology TENR is composed of Threat, Exposure, Necessity and Response:

- Threat: Any individuals or any actions or anything likely to cause harm.
- Exposure: Potential for harm to people.
- Necessity: Is about the officer's decision whether or not to respond to a given situation.
- Response: An officer must consider all the circumstances and must be timely, appropriate and proportionate.

189. The overriding principle when applying TENR is that 'safety is success'. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.

190. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.

'Use of Force' policy

191. The Police 'Use of Force' policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.

192. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public.

193. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

194. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely de-escalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.

195. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are:
- cooperative; passively resisting (refuses verbally or with physical inactivity);
 - actively resisting (pulls, pushes or runs away);
 - assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or
 - presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
196. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

'Fleeing driver' policy

197. A 'fleeing driver' is a driver who has been signalled to stop by an officer but fails to do so.
198. The overriding principle of the Police fleeing driver policy is that: *"Public and staff safety takes precedence over the immediate apprehension of the offender."*
199. An additional principle is that *"fleeing driver incidents will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing."*
200. Under the Police 'Fleeing driver' policy, the pursuing officer[s] must carry out a TENR (risk assessment when deciding to commence or continue a pursuit. 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."*
201. The Police Communications Centre's dispatcher transmits a pursuit warning to all vehicles involved: *"{Call sign} if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge"*
202. The policy states that no more than two vehicles should actively participate in a fleeing driver pursuit unless they are preparing tactical options, undertaking a temporary road closure, or responding to a Pursuit Controller's direction.

Aerial surveillance

203. Where available and tactically appropriate, an aircraft (such as the Police helicopter, Eagle) must take over primary responsibility for providing commentary to Police Communications, in order to reduce pressure on the lead or secondary vehicle providing the situation reports.
204. Once aerial surveillance is established, the Pursuit Controller must consider instructing the lead vehicle (and secondary if present) to drop back and consider the appropriate role of all vehicles involved, including whether they should remain in pursuit, or whether other tactical options should be employed.
205. Aircraft will assist the Pursuit Controller in the control and coordination of the pursuit by (amongst other things):
- providing sit-reps;
 - continually undertaking a risk assessment (TENR) and advising any change in justification to pursue; and
 - recommending abandonment.

Tyre deflation devices (TDD)

206. Tyre deflation devices (TDD), commonly referred to as 'road spikes,' are a tactical option used to stop fleeing vehicles. The overriding principle is that every deployment of road spikes is inherently dangerous, and the safety of Police and the public takes precedence over the immediate apprehension of the offender.
207. Appropriately certified staff may deploy road spikes on the authority of the Pursuit Controller, as per the 'Fleeing driver policy.'
208. Deploying officers must continually assess the risks of deployment using the TENR framework, to ensure that the risks are not outweighed by the benefits of deployment. If this becomes the case, the deployment should be abandoned.

Spitting hoods

209. Police policy on mechanical restraints provides that spitting hoods may be used with other restraints (such as handcuffs) to restrain people *"who are prone to spitting or have threatened to spit."*
210. A supervisor's authority is required before applying a spit hood unless immediate action is required. Spitting hoods must be applied in accordance with approved training.
211. A person in a spit hood must be watched or directly observed without interruption. The time that the spitting hood was applied and removed must be recorded.

212. The spit hood must be removed as soon as the need for it ceases, but it cannot be left on a person for more than two hours without medical assessment.
213. A spit hood must not be used on anyone who is *“bleeding profusely from the mouth and nose area.”*

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.

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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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