

Officer A should have been advised not to have a shower until all forensic testing of him was complete.

Analysis of the Issues

5. Video footage of this incident appeared in the media shortly after it occurred. This gave an inaccurate representation of the events as later analysis shows the sound of shots had been added and the timing and sequence of events were affected by editing.
6. We reviewed original CCTV footage provided by local businesses during our investigation. A member of the public also provided a recording she took on her cell phone in Te Teko. This contained audio of some of the shots fired, but no significant visual footage.
7. We were unable to obtain Mr X's version of events as he refused to speak with us.

Background

8. On 26 May 2020, the day before this incident took place, Police issued an intelligence report about Mr X to all the officers in the District. Such intelligence reports are circulated to staff to highlight a potentially dangerous individual. They outline their risk, vehicles used and associates, and appropriate action to be taken should staff encounter them. They also include a photograph of the person.
9. All of the officers involved in this incident were aware of the report, which advised them that there was a warrant out to arrest Mr X and that they should treat him as 'armed'. It advised that Mr X:
 - had not returned to Waikeria Prison after being granted compassionate leave to attend his uncle's tangi;
 - was a patched Mongrel Mob member;
 - had a history of "*extensive violence*";
 - was a heavy methamphetamine user; and
 - was wanted on 17 active charges which included possessing firearms, assaulting Police, escaping custody, and drug and serious driving charges.
10. The report also said a rifle with a round in its barrel and a cut-down rifle had been found in Mr X's car when he was arrested in April (this incident actually occurred in March). Shotgun rounds had been found, but no shotgun was recovered. The pursuit had lasted over half an hour and had ended with Mr X driving through an intersection and crashing. Mr X ran from the car and was not found until the following day, when he was forcibly taken into custody. Officer A had been involved in the incident and also knew Mr X from previous dealings with him.

11. On the day of this incident, 27 May 2020, Officers A, B, C, D and E were executing an arrest warrant at a house in Kawerau, when they unexpectedly discovered Mr X (with an unknown passenger) in the Falcon on the driveway of the property.¹ Mr X fled in the Falcon and the officers pursued.
12. Officer A says, Mr X's manner of driving caused him to believe Mr X *"...had no concerns for the public safety and was taking dangerous risks to avoid arrest."*
13. Police successfully spiked the Falcon's tyres, which began deteriorating. As Mr X entered the 50 kph area of Te Teko, the Falcon slowed down and officers believed it would soon stop.

ISSUE 1: WAS OFFICER A JUSTIFIED IN SHOOTING AT MR X?

Were officers justified in arming themselves?

14. According to the 'Police Firearms' policy, officers may carry firearms when their assessment of a situation is that there is an immediate threat, or a situation is likely to escalate to the point where there is the threat of death or grievous bodily harm.²
15. Officer A believed: *"...it was highly likely [Mr X] would use a weapon, including a firearm, against Police to avoid arrest."* This was a reasonable assessment based on his knowledge of Mr X's propensity to use firearms. Officer A was justified in arming himself.
16. Officer B continued driving, while Officer A got the Glock out of the safe and 'actioned' it in the footwell.³ He holstered the Glock and reminded himself of the Fire Orders, according to protocol.⁴ Officer A estimates he armed himself less than two minutes before arriving in Te Teko.
17. Officer A made the decision not to wear his Hard Armour Plates (HAP) as there was no time to stop, retrieve the HAP from the car boot, and put it on. He believes, if he had done this, he would have been too far behind Mr X, and therefore not in a position to protect other officers and members of the public, if needed. Policy says officers must wear the approved HAP when going to an incident where they believe firearms could be present.⁵ Officer A placed his own safety at risk by not wearing his HAP and should have put it on when he armed himself.
18. Other officers were also justified in arming themselves due to their knowledge of Mr X's history and his propensity to use firearms.

¹ The officers were all recognisable as Police officers as they were wearing uniforms.

² See paragraphs 118 - 124 for firearms policy.

³ 'Actioned' refers to loading a round into the pistol's chamber.

⁴ Fire orders are instructions which set out the circumstances under which Police may use firearms.

⁵ Hard Armour Plate (HAP) systems: A metal plate to be worn over Stab Resistant Body Armour which provides additional protection of vital organs during incidents involving firearms.

19. Officer C did not have time to stop and arm up during the pursuit, however, he was wearing ballistic plates inside the vest. Officers D and E, in the secondary pursuit position, did not have firearms or HAP available in their car. Officer F armed up with a Glock and put HAP on.

What happened in Te Teko?

Where were the officers and Mr X positioned?

20. CCTV footage shows that, as Mr X drove into the Te Teko township, past a superette, one of the Falcon's tyres came off. Mr X slowed down just before the Te Teko Road/Tahuna Road intersection.
21. While the Falcon was still moving, Mr X opened the driver's door and pointed a long-barrelled shotgun towards the Police cars following him.⁶ He got out of the rolling car and again pointed the shotgun in the direction of the Police cars.
22. The Falcon came to a gradual stop outside a kōhanga reo, opposite the Te Teko Suppa Market dairy. (There is also a gym, post office, and take-away shop by the dairy.) Members of the public took cover inside shops.
23. Officer C pulled over to the left, about 3-4 car lengths behind where the Falcon stopped, and could clearly see Mr X and the passenger sitting in the front of the Falcon. Officer C saw the barrel of Mr X's shotgun as he moved it from his left hand to his right, and yelled "*Firearm, firearm, firearm*" over the radio.
24. Officers D and E were driving past Officer C's car, intending to get close to the Falcon's driver's door in case Mr X tried to run. They saw Mr X open his door and point the shotgun towards the following Police cars, so they took evasive action, quickly turning left into Te Teko Road.
25. Officer C recalls seeing Mr X and his passenger both getting out of the Falcon. Officer C reversed the patrol car (about a car length), and then reached down to get the Glock out of the safe in the passenger footwell.
26. Officers A and B both believe their car was in a different position from what CCTV footage shows, throughout the shooting part of the incident. This is discussed further below. CCTV footage shows Officers A and B stopped about 50 metres back from where the Falcon stopped, next to where Officer C stopped after reversing. Their car was parked at about a 45° angle across the turning lane.
27. Officers F and G parked between Officers A's and B's patrol car, and Officer C's, about a car-length back from the rear of Officer C's car.
28. A member of the public, Mrs Z, parked her BMW outside the Suppa Market. She left her keys in the BMW and went into the shop. She says at some point, she told the staff to shut the shop door.

⁶ Mr X's firearm was later identified as a Taurus/Rossi, single barrel, break open, 20 gauge shotgun.

What was Officer A's account of what happened?

29. Once Mr X was fully out of the Falcon, he turned to directly face the officers, pointing the firearm at them while holding it with both hands. Officer A thought Mr X was getting ready to fire at them.
30. Officer A believed he crouched behind the open door of his patrol car, in the 'V' (door jamb).
31. Officer A says he drew his Glock, while scanning the area, which he knows well: *"I knew that if I had to use my firearm, that the kōhanga and the dairy were not in my line of fire as they were approximately ninety degrees to my left or right."*⁷
32. Officer A recalls challenging Mr X with his Glock and yelling: *"Armed Police. Drop your weapon"*. He continued yelling at Mr X who gave no indication he had heard him. (Witnesses say they could not hear anyone yelling due to the loud noise of the multiple Police sirens.)
33. According to Officer A, he raised his Glock with two hands, pointing the barrel towards Mr X's leg area. This allowed him to have a clear view of Mr X's upper body and his firearm, and also gave him the ability to raise his Glock quickly in order to shoot. He did not have his finger on the trigger and continued to scan the area. He was mindful that Officer C was in close proximity and there were members of the public behind them, by the superette. (He thought Officer C remained close to Mr X's Falcon as he did not see the patrol car reverse.)
34. Officer A believed Mr X then fired at the officers. He says he believed this due to Mr X's stance and how he was holding the firearm.
35. Officer A says he raised his Glock and lined up his sights with Mr X's body,⁸ then *"fired a number of shots in quick succession"*. He reset himself, then fired one *"more-controlled"* shot at Mr X.
36. Mr X lowered himself into a crouching position. Officer A believed he may have hit Mr X, so lowered his Glock to have a clear view of him, while still able to raise it again quickly, if Mr X continued to be a threat.
37. Mr X stood up and started moving across the road in a side-stepping motion, towards the Suppa Market dairy (on the same side of the road as Officers A and B). Mr X continued to point his shotgun at the officers. Officer A tracked Mr X with his Glock as he believed Mr X *"would stop and shoot us again"*.
38. Officer A says Mr X seemed to recoil, which made him believe Mr X was firing at him and the other officers again. Officer A fired more shots at Mr X.
39. Officer A says he took his finger off the trigger when Mr X turned his back towards officers and ran toward the BMW.

⁷ We believe this actually relates to the position Officer A was in once his patrol car moved closer, and once Mr X was at the BMW.

⁸ Firearm sights are an optical device that assist a person in aiming at their target.

40. Mr X got into the driving seat of the BMW and closed the door. Officer A could see the back of him through the rear window.
41. Officer A scanned to ensure he could not see anyone else inside the BMW or behind it, in the firing zone. He yelled at Mr X to throw his firearm out of the car and to give up.
42. According to Officer A, after opening the BMW door, Mr X pointed his shotgun towards him and other officers. Before Mr X was able to stand up, Officer A fired “a number of shots”, aiming at the driver’s seat. He says his intention was to “stop [Mr X] as a threat, not to disable the vehicle”.
43. At this point, according to Officer A, he saw the left tail-light explode before he “reset, fired at the back window and then fired one more shot...” Mr X then dropped his shotgun and quickly got back into the BMW. He shut the door, drove around in a circle, then out of Te Teko.

What does CCTV and audio footage show?

44. CCTV shows Mr X moved sideways across the road, while continuing to point his shotgun at the patrol cars. Just after Mr X passes the middle line on the road, Officer A opened his patrol car door.
45. When Mr X was about three-quarters of the way across the road, he dropped his left arm down, holding the shotgun with one arm, while still pointing it towards the officers. We believe this is when Officer A first fired three shots at Mr X.
46. Mr X ducked down, while still holding his shotgun with one arm. The shotgun changed position, from pointing towards the officers to pointing upwards towards the sky. While remaining in a low position, Mr X turned away from the officers, and ran towards the BMW.
47. In total, it took Mr X about six seconds to cross the road from the time he got out of the Falcon until he got into the BMW.
48. Based on the audio footage combined with the CCTV, we believe Officer A fired the fourth shot from the stationary patrol car (about 50 metres away) as Mr X got into the driver’s seat of the BMW.
49. Officer B started slowly moving their patrol car closer. Officer A fired the fifth shot from the slow-moving car, with the door still open.
50. Mr X sat fully inside the BMW and reached for the door handle to close the door. As he did this, Officer A fired the sixth shot, again, from the moving patrol car. The shot hit the left side of the back window of the BMW, causing a fragment to fall off. (Officer A recalls hitting the tail-light, which we believe to be this shot.)
51. Two seconds later, Officer A fired the seventh shot as Mr X closed the driver’s door. This shot hit the right side of the back window, on the glass. Again, we believe Officer A fired these shots while in the moving patrol car, through his open door.

52. Officers A's and B's patrol car stopped by a pole, near the corner of the Suppa Market, about 20 metres behind the BMW. We note that both Officers A and B thought they were about 40 metres back from the BMW.
53. At that same time, Mr X opened the BMW door (three seconds after he had first closed the BMW door). Officer A got out of the stationary car and crouched behind the open door, using it as protection, while pointing his Glock through the 'V' (door jamb).
54. While Mr X was still sitting in the driver's seat, Officer A fired the eighth shot. This hit the top of the right-hand, rear passenger window.
55. One second later, Mr X put one leg onto the ground and his head came partially out of the car door, as though intending to get out of the BMW. Mr X held his shotgun in both hands with it pointing upwards and, at one point, looked towards the officers.
56. Officer A fired the ninth shot at about the same time that Mr X dropped his firearm onto the ground outside the BMW, before getting back fully into the BMW.
57. Mr X sat in the BMW for about seven seconds with the driver's door open. As he shut the door, the back window of the BMW shattered. We considered whether this may have been caused by Officer A firing another shot after Mr X dropped his shotgun. However, Officer A's door was shut at the time the back window smashed. We are satisfied there were no other shots fired, by either Officer A or anyone else. Our analysis of the footage leads us to believe the back window was damaged by three of the shots before it shattered. We believe it is likely the weakened window shattered as a result of Mr X closing the driver's door.
58. Mr X sat in the BMW for a further ten seconds before driving off, out of Te Teko.
59. Based on our review of the footage and audio recording, we conclude that Officer A:
 - fired three shots as Mr X crossed the road;
 - fired two shots as Mr X got into the BMW;
 - fired three shots while Mr X was in the BMW; and
 - fired one shot while Mr X was partially out of the BMW, dropping his shotgun.
60. We also conclude that Officer A:
 - fired the first four shots from about 50 metres away from Mr X;
 - fired the next three shots from the passenger seat of the slow-moving patrol car; and
 - fired the last two shots while crouched in the patrol car door jamb, about 20 metres away from the BMW.

What did Officer A say after seeing the CCTV footage?

61. During our investigation it became clear Officer A's account did not align with the CCTV footage. We re-interviewed Officer A, showing him the CCTV footage. Officer A was genuinely surprised to see some parts of the incident events playing out differently to how he believed they happened.
62. Officer A was surprised to see their patrol car was so far back and close to Officer C's car while Mr X was crossing the road. He thought they were positioned about 40 metres back from the Suppa Market dairy, on the same side of the road (oncoming lane), parked on an angle, the entire time of the shooting.
63. Officer A was also surprised to learn he had fired shots from the moving patrol car: *"Honestly, I don't even recall the car going forward."* (We note that Officer B also had no recollection of the patrol car moving forward while Officer A was shooting.)
64. Until shown the CCTV footage, Officer A believed he had his finger off the trigger and the barrel of his Glock down while Mr X was sitting in the BMW. He said Police are trained to take their finger off the trigger *"when the threat's no longer there"*.
65. Officer A believed he only shot again when Mr X looked to be getting out of the BMW, as he then posed an increased risk to the officers and members of the public.
66. When presented with the CCTV footage, Officer A thought he must have fired the shots in response to the movements Mr X made while sitting in the car. He said, Mr X:

"...would have done something that I would have seen that would have caused me to believe that he was going to be a risk, firing the gun at us or something... there would have been something that would have triggered me."
67. Footage shows Mr X was moving his arms while sitting in the BMW. Although we accept these could have been construed as being related to holding his firearm, with the benefit of CCTV footage, we believe it is possible it was related to Mr X familiarising himself with the ignition.

Why was Officer A's account different from what actually occurred?

68. We found Officer A to be honest. We accept he genuinely believed his recollection of the events occurred as he described, until shown the footage.
69. Alexis Artwohl says:

*"...as multiple researchers have pointed out, memory impairment is an inherent part of critical incidents. The memory of a highly stressful event can often be fragmented, disorganized, out of order, or contain gaps where the person has no memory at all."*⁹

⁹ Artwohl, A, 'No Recall of Weapon Discharge' [2003] Law Enforcement Executive Forum (volume 3, number 2) .

Was Officer A legally justified in shooting at Mr X in self-defence and/or defence of others?

70. We are satisfied Officer A fired nine shots in total. The Glock magazine holds 17 rounds and Officer A says it was full when he armed himself. There were eight unfired rounds left in the magazine when later inspected. This is in line with the CCTV footage and audio recording that we assessed.
71. The entire shooting incident in Te Teko took place over about 37 seconds, from when Mr X got out of the Falcon until he left in the BMW. The nine shots were fired by Officer A over a period of about 15 seconds, from when Mr X was about three-quarters of the way across the road until Mr X dropped his shotgun onto the ground. It was the first time Officer A had ever fired at an offender.
72. There is no evidence that Mr X actually fired at Police. No rounds were found after the incident.
73. Officer D was asked to have a look at Mr X's shotgun later in the day as there was concern it may be in a state where it could accidentally fire. He says the trigger was not sitting where it should have been and was cocked, so he needed to unload it. His immediate impression was that Mr X had:
- “... been yanking the crap out of it while it's been on 'safe' to the point where he's broken the trigger... I sort of thought you can clearly see what his intention was. It was to actually let it rip... 'cos otherwise there's no other reason for it to... be like that...”¹⁰*
74. The law allows a person to use reasonable force in defence of themselves or another.¹¹
75. Officer A believes every shot he fired at Mr X was justified as they were to defend himself, the other Police officers, and members of the public.
76. To rely on the legal defence, Officer A's actions must be assessed on both a subjective and an objective basis.

What did Officer A believe the circumstances to be?

77. Officer A believed Mr X posed a significant threat. His previous dealings with Mr X, and knowledge of his offending, led him to believe Mr X had both the means and the propensity to fire at officers: *“he is the sort of person that would go through with a violent action”* and would be willing to commit to firing the shotgun.
78. When Mr X got out of the Falcon and presented his shotgun, Officer A believed:
- Mr X fired at officers;

¹⁰ Mr X's shotgun was later inspected by an armourer. It test fired and operated without fault.

¹¹ Section 48 of the Crimes Act 1961.

- he and other officers were at risk of serious injury or death, particularly Officer C, who he believed was “very close” to Mr X;
- members of the public who were behind the officers, at the superette, were at risk of serious injury or death;
- Mr X’s shotgun was capable of killing or causing serious injury;
- if he or the other officers made an attempt to run for cover or drive away, they would be “easy targets” and at risk of being shot by Mr X;
- he was the only officer (who he knew of) that was armed at the time and therefore, in a position to stop Mr X from shooting at them;
- he needed to act immediately to protect himself and others;
- pepper spray or a Taser were not viable options in stopping Mr X; and
- it was appropriate to use the Glock in response to Mr X having a firearm.

79. It is evident a number of witnesses also believed Mr X was firing at Police:

- Officer G believed Mr X initially fired at least two shots toward them, and thought he shot at the officers once or twice more;
- Officer F believed Mr X fired one shot, causing him and Officer G to duck behind their dashboard; and
- four members of the public, who witnessed the shooting, also believed Mr X was firing at Police.¹²

80. Officer A then believed Mr X fired again at the officers partway across the road. After reviewing the footage, we accept this belief was reasonable.

81. When Mr X got into the BMW, Officer A was fearful there were members of the public in it to whom Mr X could pose a threat. He did not see Mr X throw or pull anyone out of the car and, looking through the rear window, could not see anyone in it other than the back of Mr X sitting in the driver’s seat. Based on this, he was comfortable that there was no-one else in the BMW.

82. Officer A says, while Mr X was sitting in the driver’s seat of the BMW, he believed Mr X still posed a risk to himself, Officer B, people in the shop, and other members of the public:

“The threat is he’s still got the firearm... when I’d seen him jump out with the gun and then when he’d crossed the road...my belief was that he’d fired it at us... with that gun he was still capable of doing it, even when he was hopping in that BMW, inside it... He’s still capable... My belief at the time was it’s easy for him to swing back out, shoot it. He could even stick it out the back ... and just take a random shot at us.”

¹² Officers C, E, and F heard some gun shots but had no idea who was firing.

83. When Mr X opened the BMW door and appeared to be getting out, Officer A believed Mr X was pointing his shotgun towards him and Officer B. He says the level of risk changed at this point as Mr X was stepping out and facing in the direction of the officers: “... I’ve seen the firearm again [and] I’ve deemed that he’s going to shoot at us again...” Officer A also believed Mr X still posed a risk of serious harm to people in the Suppa Market dairy.
84. We have found Officer A’s accounts, given to ourselves and Police, to be consistent and honest.

Was Officer A’s use of force for the purpose of defending himself and others?

85. We note Officer A initially only fired after Mr X pointed his shotgun at officers and his body was in a position which indicated he may fire (as Officer A and other witnesses believe he did). Officer A stopped firing at Mr X as soon as he dropped his shotgun onto the ground, no longer posing an obvious threat to himself or others.
86. We acknowledge the view of other officers who were present during the incident, whose accounts support Officer A’s assertion that he fired in defence of others. Officer D (a senior sergeant) told us:

“I think we would have been in a bit of trouble if... [Officer A] hadn't had firearms that day 'cos a number of us weren't equipped 'cos we weren't expecting it. And I'm thankful for the fact that he did have it... because as you can see and as I saw of that shotgun, to me, that's a determined offender, keen as to use it and possibly the only thing that saved us from someone getting shot... was the fact that someone presented a Glock and used it... So, I'm very grateful that [Officer A] did what he did.”

87. We accept Officer A fired shots one to five, and shot nine, in order to defend himself and others. However, it is implausible to believe Officer A perceived Mr X posed an immediate threat while sitting inside the car, at the instant he pulled the trigger to fire shots six, seven and eight, hitting the BMW.

Was Officer A’s use of force against Mr X reasonable in the circumstances as he believed them to be?

88. We accept Officer A has no recollection of shooting from the moving patrol car. Police policy does not specifically address officers shooting from moving vehicles and officers are not trained to do so. Officer A was trained to fire a Glock at a distance of up to 7 metres. His ability to shoot accurately from over 50 metres away from Mr X will have been severely compromised.
89. We do not condone shooting from a moving car, unless in exceptional circumstances. It is extremely difficult to hit a target accurately when in a moving vehicle. This is due to the instability caused by not having a solid stance to shoot from and the movement of the vehicle. There is a high probability of misdirection or ricochet which increases the risk of causing unintentional death, injury or damage. Officer A should not have fired until the patrol car was stationary and he could safely take a shot, if needed.
90. We accept that neither Officer A nor any other officer were close enough to consider using pepper spray or a Taser.

91. Given Officer A genuinely believed Mr X was firing upon them, we accept shots one to five were reasonable (see paragraphs 45 – 49).
92. By firing at the BMW, Officer A posed a greater risk than Mr X, to anyone who was potentially still inside it. We accept Officer A was genuine in his belief that there was no-one else in the car. However, this was an opportunistic theft of a car belonging to a member of the public who had stopped to go into the dairy. Therefore, Officer A should have considered the reasonable possibility of others still being present in the car, such as a small child being strapped into a car seat.
93. Regarding shots six, seven and eight, until shown CCTV footage, we accept that Officer A genuinely believed he did not fire at Mr X while he was sitting in the driver's seat, facing forward, posing no actual immediate threat to any person. However, we are satisfied that his belief in this respect is based on an impaired recollection (see paragraph 69 regarding memory impairment), since it is implausible that he mistakenly perceived at the time that Mr X had got out of the car.
94. Shots six, seven and eight should therefore not have been fired and Officer A was not justified in doing so. In interview, he commendably agreed with this.
95. Shot nine was reasonable. By getting out of the BMW with his shotgun, Mr X posed an increased risk of serious harm to Police and members of the public.

FINDINGS ON ISSUE 1

Officers were justified in arming themselves. Officer A should have worn hard armour plates to ensure his safety.

Officer A should not have fired shots from a moving car.

Officer A was justified in firing some, but not all of the shots at Mr X.

ISSUE 2: DID OFFICERS FOLLOW PROCEDURES CORRECTLY AFTER THE SHOOTING?

96. The Police 'firearms' policy says: *"when an employee has fired shots that could have caused death or injury to any person, the incident controller present or the person appointed to do so must take control of the scene"*. They must manage the scene according to the principles in policy around the 'Investigations of critical incidents'.
97. The 'Crime scene examination' policy outlines the responsibilities of the officers first on the scene.¹³
98. Officers A and B were the only officers who remained behind, so took initial control of the scene. As soon as Mr X drove off in the BMW, Officer B moved the patrol car to outside the Suppa Market dairy, parking where the BMW had been.

¹³ See paragraphs 130 - 132 for relevant 'Crime scene examination' policy.

99. The officers initially closed the road (SH30) to traffic. Other than two vehicles that drove through the scene, traffic was stopped until after Mr X drove back through Te Teko.
100. During this time, Officer A secured the Falcon while Officer B was dealing with Mr X's shotgun. Officer A removed the keys from the car ignition and briefly checked there were no other weapons inside it. Officer B took photos of the Falcon in the position Mr X left it in and it was towed about 20 minutes after the incident.
101. Officer H, an off-duty officer, saw the incident unfold from his home, about 200m from where the Falcon stopped. When Mr X left Te Teko, Officer H assisted Officers A and D with controlling traffic.
102. Footage shows that traffic began driving through both sides of the road within two minutes of Mr X driving back through Te Teko. More than 140 cars and ten large trucks (including logging trucks) drove through the scene in the 25 minutes before the officers began a cursory search of the area.
103. Officers A, B and H say they searched the area for about 20 minutes, looking for evidence. They did not find any shell casings that had been fired. There were also no casings found during a more extensive search, conducted about an hour later, by other officers. By allowing traffic to flow through the scene, evidence such as rounds, were potentially lost.
104. Eight casings from the rounds fired by Officer A were found later that afternoon on the front of the patrol car. The officers had unknowingly driven back to the Police station in Kawerau with them sitting on top of the bonnet, in a space by the window wipers.
105. The incident controller should have appointed an officer to take control of the scene. Until this was able to happen, Officer A and B should have maintained the integrity of the scene by closing the road and guarding it until appointed staff arrived to take control of it. The Falcon and their patrol car should have been left in the positions they were in when Officer A fired at Mr X. This would have allowed Police to obtain accurate measurements of distances and angles of shots.

What happened with Officer A's Glock?

106. The 'Investigation of critical incidents' policy instructs officers to:
 - *"make firearms used in a critical incident safe as soon as practicable and maintain the integrity of the firearm exhibit".*
107. Officer A holstered his Glock as soon as Mr X drove away from Te Teko. He remained with it until he arrived back at Kawerau Police Station, about an hour later. At that point, he handed the Glock and holster to Officer B.
108. According to policy, as Officer A had fired his Glock, Officer B or another officer who was not involved, should have immediately taken charge of the Glock.

What happened with Mr X's shotgun?

109. As soon as Mr X left Te Teko, Officer B secured Mr X's shotgun. He photographed it in position, then seized it as an exhibit. He says:

"What I noted straight away was the hammer was fully cocked and the actual trigger was depressed... I tried to open it up to see if there was any rounds in it... but I couldn't open it."

110. This caused Officer B to believe Mr X had attempted to fire the shotgun, but that it had not worked.
111. Officer A recalls discussing Mr X's shotgun with Officer B but cannot recall what he said. He saw Mr X's shotgun in the back of their patrol car and noted it was a single-barrelled shotgun. Officer A says, for his peace of mind, he put on gloves, picked it up, and checked to ensure it was unloaded. He noticed the trigger was depressed (pulled right in). He pressed the barrel break but it was stiff and the barrel would not open. This indicated Mr X had either fired, or attempted to fire it. He told Officer B the shotgun appeared to be jammed so they needed to treat it as though it was loaded.
112. According to policy, Officer A should not have touched Mr X's shotgun.

Did Officer A complete the required tests following firing his Glock?

113. About 20 minutes after arriving back at the Police station, Officer A took his uniform off and had a short shower. His senior sergeant then told Officer A he had to complete firearm discharge residue and alcohol and drug testing. Officer A immediately realised he should not have had a shower and admitted to the senior sergeant that he had.
114. In order for the gunshot residue test to be accurate, it should have been done prior to Officer A washing himself clean. We accept this was an error on Officer A's part and he was unaware of the correct process. One of Officer A's senior officers should have ensured he was advised of the need to undergo the testing prior to him having his shower.
115. Officer A's drug and alcohol test was subsequently completed. (Results show he had not consumed drugs or alcohol.)
116. Officer A says he believes it would have been better if other officers had come to take over the securing of the scene, due to his involvement. He says himself and Officer B did the best they could at the time.

FINDINGS ON ISSUE 2

The incident controller should have appointed an officer to be in control of the scene.

In the absence of more senior staff members being present, Officers A and B should have immediately maintained the integrity of the scene by closing the road and guarding it until further staff arrived to take control of it.

Officer B or another officer should have taken control of Officer A's Glock.

Officer A should not have touched Mr X's shotgun.

Officer A should have been advised not to have a shower until all forensic testing of him was complete.

Subsequent Police Action

117. Police have initiated a review of their 'Police Firearms' policy and have told us that it will be amended to cover the firing of shots by officers from moving vehicles. We consider that the amended policy should indicate that officers should only fire shots from a moving vehicle in exceptional circumstances.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

6 October 2022

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Appendix

'POLICE FIREARMS' POLICY

118. The New Zealand Police are not routinely armed. As such, it is recognised that firearms need to be made available for deployment in such a way that they are accessible, depending on the situation.
119. Employees who carry firearms because their assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the Tactical Options Framework must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable.
120. With the exception of specialist groups, employees must wear ballistic body armour when deploying to an incident where they believe firearms are or could be present. This includes circumstances where routine carriage of firearms has been authorised in response to a specific threat.
121. When dealing with an armed offender or an offender believed to be armed, these basic principles apply:
- An ongoing risk assessment should be conducted during the course of an incident.
 - It is better to take the matter too seriously than too lightly.
 - Caution is not cowardice.
 - When the offender's actions permit, focus on de-escalation, communication, and prevention, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.
 - Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, act immediately to prevent this.
 - Treat all armed offenders, or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.
122. 'Fire Orders' are operationally specific instructions on the circumstances in which Police employees may use firearms.
123. Every Police employee issued with a firearm is personally responsible for ensuring they are thoroughly conversant with relevant law, particularly sections 39, 40, 41, 48, and 62 of the Crimes Act 1961. Any employee who fires a shot must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so.

124. An offender must not be shot without first considering communication (asking them to surrender) unless it impractical or unsafe to do so. Officers must consider where there are less violent alternatives and whether any further delay in apprehending the offender would be dangerous or impractical.

'USE OF FORCE' POLICY

125. The Police's '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, retrain 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.
126. Police policy provides a Tactical Options Framework (TOF) 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. Police refer to this assessment as the TENR (Threat, Exposure, Necessity and Response).
127. 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).
128. 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.
129. 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.

'CRIME SCENE EXAMINATION' POLICY

130. Crime scene examinations are carried out to:

- *“establish if a crime has been committed*
- *establish the crime’s key elements and provide facts for the basis of an inquiry identify the suspect*
- *collect evidence that could establish whether contact with the victim or scene has occurred identify people associated with the crime*
- *exonerate the innocent*
- *corroborate or contest witness’ and victims’ accounts verify confessions and admissions*
- *exclude possible defences*
- *corroborate or exclude other evidence relating to the crime or incident.”*

131. Crime scene processing includes photography, attempting to obtain fingerprints and DNA, and recovering physical evidence for forensic examination.

132. Specific roles and responsibilities are assigned to various Police employees involved at crime scenes.

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. 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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