



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Police use of dangerous manoeuvre results in the death of Mr Peter Boy Tuhi

1. On 21 December 2021, an intoxicated 67-year-old man, Mr Tuhi, was taken to the ground by an officer who was arresting him. The man hit his head on the ground and lost consciousness. He suffered serious head and neck injuries as a result of the fall, and died the following day.
2. Police notified us of the incident as required by section 13 of the Independent Police Conduct Authority Act 1988.¹ We conducted an independent investigation.

The Authority's Findings

Issue 1: Was the arrest of Mr Tuhi justified?

The arrest of Mr Tuhi was justified.

Issue 2: Was the force used to arrest Mr Tuhi justified?

Officer A was justified in taking Mr Tuhi to the ground to gain control of and restrain him; however, he used a dangerous technique to do so. The use of force was disproportionate and unreasonable given the level of resistance and risk posed by Mr Tuhi.

Issue 3: Did Officer A provide Mr Tuhi with appropriate medical care?

Officer A provided appropriate medical care to Mr Tuhi.

¹ Section 13 says: "Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused."

Analysis of the Issues

What took place before Mr Tuhi was arrested?

3. At about 11am, Mr Tuhi parked his Land Rover in the Levin Cosmopolitan Club carpark then walked to another bar, around the corner. He spent about four hours there, drinking beer with regular patrons, before falling backwards off his chair. Witnesses say they thought Mr Tuhi possibly hit his head on the wall when he fell, however, there is no evidence he injured his head during this fall. Staff asked Mr Tuhi to leave the bar, offering to call him a taxi. Mr Tuhi declined, and left on foot, returning to his Land Rover.
4. The Cosmopolitan Club has CCTV cameras, which captured the incident.
5. At about 3pm, Mr Z and his partner, Ms Y, drove into the carpark in a ute. Mr Z parked two spaces over from Mr Tuhi, leaving one empty parking space in between them.
6. Mr Tuhi was outside his Land Rover, with the back passenger door open, possibly dealing with his dog who was inside the Land Rover.
7. Ms Y went inside the Club, intending to briefly see Ms X, who worked there. Mr Z remained sitting in the driver's seat of the ute, reading a phone message.
8. Mr Tuhi came up to the front passenger window of Mr Z's ute and started shouting at him and banging on the partially opened window. Mr Tuhi appeared angry about something, but Mr Z could not understand what he was saying as Mr Tuhi's words were slurred. Mr Z put the window up and told Mr Tuhi: *"I'm on the phone, go away please"*. Mr Tuhi tried to open the ute door, so Mr Z locked the doors.
9. Mr Z rang Ms Y and asked her to send someone from the Club to come and deal with Mr Tuhi.
10. Footage shows that Mr Tuhi was at Mr Z's window for over one minute, then walked away and stood by his Land Rover. Three minutes later, he again approached Mr Z's ute and walked to the driver's door as a Club employee, Mr W, came over.
11. In an effort to get away from Mr Tuhi, Mr Z drove his ute forwards about 20 metres, into another parking space.
12. Mr W stood with Mr Tuhi, trying to speak with him. He had not met Mr Tuhi before and asked him if he was a member of the Club, however Mr Tuhi swore at him. Mr W says Mr Tuhi was very unsteady on his feet and he believed he was highly intoxicated.
13. Mr Z could hear Mr Tuhi shouting and saw that he was standing very close to Mr W. Concerned for Mr W's safety, Mr Z got out of his ute.
14. When Mr Tuhi saw Mr Z, he walked over to him and they had a heated conversation. Ms Y arrived and she and Mr Z went to get into the ute.

15. However, when Mr Z went to get into his seat, Mr Tuhi pushed him on his back, using both his hands. Footage shows Mr Z got back out of the ute and both men stood up close to each other, face to face. Mr Tuhi put his hands on Mr Z's chest, grabbing his t-shirt. Mr Z tried to remove Mr Tuhi's hands and pushed him away. Mr Tuhi ripped Mr Z's t-shirt during the scuffle. Mr W, Ms Y, and Ms X intervened, separating the two men, and Mr Z got back into the ute.²
16. Mr W told Mr Tuhi to leave, however, he refused. He continued being verbally abusive. When Mr W told him he was calling the Police, Mr Tuhi said, "*I don't give a f**k*" and went back to his Land Rover.
17. Mr W called 111. He told the call taker Mr Tuhi was drunk and had refused to leave the premises. He said Mr Tuhi now appeared to be preparing to drive but he was so intoxicated that if he drove, "*anything could happen*". Mr W told the call taker Mr Tuhi was "*very aggro*", and had tried to assault one of their members, ripping his shirt. He told them Mr Tuhi was "*wobbly*" and "*a bit slow on it*" due to being intoxicated.
18. The Emergency Communications Centre asked Officer A to respond to the incident. The dispatcher told Officer A: "*Got a very aggressive [intoxicated] male who is trying to leave from the Cosmo Club... He's tried to assault one of the members at the Cossie Club. Still there at the carpark ah but is attempting to leave.*" The dispatcher described Mr Tuhi and his Land Rover, and clarified he had "*tried to take a swing*" at a Club member. Just prior to his arrival, Officer A was told Mr Tuhi was sitting in his vehicle.
19. Officer A, in Police uniform, arrived in the carpark at 3.16pm. He parked his patrol car in front of Mr Tuhi's Land Rover, blocking it in. He approached Mr Tuhi, who was standing by the Land Rover's front passenger seat, leaning inside the car towards the gear stick.
20. Officer A tried to talk with Mr Tuhi about what had happened. Mr Tuhi responded but was slurring and Officer A could not understand what he was saying. Officer A had not met Mr Tuhi before and was unsure whether he had impaired speech or it was affected by alcohol. He was unaware at the time that Mr Tuhi's ability to communicate was hindered by the fact he was hearing impaired.³
21. After Officer A told Mr Tuhi two or three times that he could not understand him, Mr Tuhi's tone of voice changed, indicating he was getting annoyed and argumentative.
22. CCTV shows that after spending about 75 seconds trying to communicate with Mr Tuhi, Officer A walked to the driver's side of the Land Rover and removed the car keys, to stop Mr Tuhi from driving.

² Ms X had come outside around this time. She went in and out of the Club during the incident as she was working, serving patrons.

³ Mr Tuhi usually did not wear his hearing aids. He communicated with people and his dog by using a self-developed sign language, and lip reading with close friends. Other people often had difficulty understanding Mr Tuhi when he spoke.

23. Officer A walked over to Mr Z's ute to speak with him, Mr W, and Ms Y, to establish what had happened. He saw Mr Z did not appear to have any injuries, suggesting Mr Tuhi's assault on him was most likely of a low level.
24. About 15 seconds later, Mr Tuhi approached the group, walking purposefully while yelling and pointing towards Mr Z (we note that throughout the whole incident, Mr Tuhi used large gestures to communicate).
25. Officer A could not understand what Mr Tuhi was saying, however says his tone was aggressive and he looked very angry. He tried to calm Mr Tuhi down, telling him to stop, to go back to his Land Rover and that he would come and talk to him soon.
26. Mr W recalls:

"[Mr Tuhi] came at the Police officer – was going to have a crack at our member [Mr Z]. The Police officer stepped in between him and said: "No, no, no," and [Mr Tuhi] just pushed the police officer out of the way."
27. Footage shows Mr Tuhi used both hands to push Officer A in the chest, with enough force to cause Officer A to move backwards a step to regain his balance. Although Mr Tuhi's hands cannot be seen in the footage, witnesses say that Mr Tuhi held Officer A by the vest and Officer A tried to take hold of his arms. Mr Tuhi pushed Officer A again, then let go. He then tried to walk around Officer A to move towards Mr Z.
28. Officer A reached for his handcuffs, telling Mr Tuhi he was under arrest for assaulting him.

ISSUE 1: WAS THE ARREST OF MR TUHI JUSTIFIED?

29. Officer A says he arrested Mr Tuhi immediately after Mr Tuhi pushed him, to prevent him from further assaulting anyone: *"...there was an assault prior to my arrival, an assault when I was there and so it was a process of stopping any further assaults."*
30. Section 39 of the Summary Offences Act 1981 allows officers to arrest any person who they have good cause to suspect has committed an offence such as assault.
31. Officer A told us he assessed the level of assault on Mr Z to be *"lower level"*. When we asked him what his perception was of the seriousness of Mr Tuhi's assault on him, Officer A told us: *"At that point in time it was a lower level assault I suppose."*
32. Mr Tuhi had already assaulted Mr Z, albeit a minor assault. There is no disputing that Mr Tuhi also pushed Officer A in the chest area and briefly grabbed his vest. Mr Z's, Ms Y's and Ms X's accounts, together with CCTV footage, corroborate this.
33. It was reasonable for Officer A to assume Mr Tuhi may assault someone else, if not arrested, given he had assaulted Mr Z and then assaulted Officer A.
34. It was also reasonable for him to assume that, if not arrested, Mr Tuhi would likely return to his Land Rover and drive while intoxicated.

35. Officer A was justified in arresting Mr Tuhi.
36. Officer A planned to address what had occurred and decide how to progress the arrest once Mr Tuhi was restrained. Officer A said this would include options such as whether to charge Mr Tuhi and take him into custody or summons him to court, or to give him a warning and arrange for him to be taken home so he would not drive while intoxicated.

FINDING ON ISSUE 1

The arrest of Mr Tuhi was justified.

ISSUE 2: WAS THE FORCE USED TO ARREST MR TUHI JUSTIFIED?

37. Immediately after telling Mr Tuhi he was under arrest, Officer A stepped behind Mr Tuhi and placed his left hand in a handcuff. Officer A says, given Mr Tuhi had assaulted him and had assaulted a member of the public, he needed to restrain him before he assaulted someone else.
38. Whilst it is not clear if Mr Tuhi understood what Officer A said to him, Officer A's subsequent action of applying the first handcuff should have made this apparent.
39. Officer A told Mr Tuhi to put his other hand behind his back, however, Mr Tuhi did not give him his free hand. Officer A says Mr Tuhi did this intentionally. He says: *"I was trying to bring his hand around and he was fighting or resisting me from doing that... I believe he knew what was going on..."*.
40. All witness accounts indicate Officer A spoke in a calm and polite manner to Mr Tuhi. Their view was that Officer A behaved very professionally towards him and had the situation under control.
41. CCTV footage shows, once Officer A had placed the first handcuff on Mr Tuhi, he led Mr Tuhi backwards a few steps, away from Mr Z and his ute. Mr Tuhi kept turning away from Officer A, to look at Mr Z, pointing at him with his right, free hand.
42. At one stage Mr Tuhi briefly turned towards Officer A and appeared to use his free hand to either try to take his left handcuff off, or to bat Officer A's hands away.
43. Mr W believed Mr Tuhi may have swung his hand in an attempt to hit Officer A. He took hold of Mr Tuhi's right arm, attempting to assist Officer A. Ms X saw this, and says when Mr W grabbed Mr Tuhi's wrist, Mr Tuhi's body went *"totally stiff, like a board"*. At about this time, Mr Z also came closer to assist, if needed.
44. Officer A could not later recall Mr W or Mr Z being involved at this point. He was unaware Mr W had taken hold of Mr Tuhi's other arm.
45. Twelve seconds after Mr Tuhi pushed Officer A, Officer A crouched down and looped his right hand between Mr Tuhi's legs, taking hold of his left thigh. He tried to lift Mr Tuhi's leg up to get him off balance and take him to the ground.

46. Officer A believed this first attempt had no effect and that Mr Tuhi remained “*rock solid*”. However, with the benefit of CCTV footage, it is evident that during this initial lift attempt, Officer A managed to pull Mr Tuhi’s left leg backwards, until it was straight. This caused Mr Tuhi to lean forward.
47. Mr Tuhi stepped his left leg forward and placed his foot back on the ground in front of him. He leaned to the left side as he tried to fully regain his balance, with Officer A and Mr W still holding his arms.
48. At about this time, Mr W placed his second hand on Mr Tuhi’s right arm, so one hand was holding his wrist and one was placed on his upper arm.
49. Officer A took a brief moment to readjust himself, crouching in a low position and looping his right arm around Mr Tuhi’s left thigh. He then pulled Mr Tuhi’s leg backwards and upwards, lifting Mr Tuhi. This caused Mr Tuhi to become completely unbalanced. As Mr Tuhi fell, Officer A took two steps, moving forward with him while maintaining his lift.
50. As both Mr Tuhi’s feet came off the ground, his left jandal flew off. He fell forward at such an angle, that at one point his left leg was straight behind him (held by Officer A), with his head and body horizontal, before his leg went up high above his head. He then fell forward hitting the asphalt, headfirst. The action resembled a rugby “spear-tackle”.
51. Mr Z tried to grab Mr Tuhi to stop his headfirst fall, however, was unable to grip him firmly enough to prevent the fall.
52. We believe Officer A was holding Mr Tuhi’s left hand as he fell. Footage shows Mr Tuhi’s left hand was near his thigh when he landed on the ground and that Officer A was holding it. There is no movement suggesting Officer A let go of the hand then re-grabbed it, nor do we believe there would have been time to do so.
53. As neither of his hands were free, Mr Tuhi was unable to use them to break the fall. We cannot be certain that, given Mr Tuhi’s level of intoxication, he would have had the time to react and break his fall, in any case.
54. In comparison to Officer A, Mr W remained fairly static throughout Mr Tuhi’s fall. His feet mostly remained in the same position throughout the fall, with his left foot moving slightly forward. He momentarily lost contact with Mr Tuhi’s arm, and his arms were outstretched when Mr Tuhi landed. Based on our analysis of Mr W’s position and movements, we do not believe he significantly contributed to the force or speed of the fall. ⁴
55. Of note, neither Mr Z nor Mr W realised Officer A had pulled Mr Tuhi’s leg upwards. They believed Mr Tuhi lost his balance and slipped while struggling with Officer A, possibly due to the fact he was wearing jandals. Ms Y also believed this.

⁴ If Mr W had been applying significant force during the fall, we would expect to have seen his torso leaning further forward, his hips twisting, and Mr Tuhi being pulled to the right.

56. Mr Tuhi's death was caused by complications of blunt trauma to the head and neck with a cervical spine fracture and spinal cord injury, sustained in the fall. The pathologist noted Mr Tuhi's spinal column was stiff due to arthritis, meaning it was more likely to break with trauma. The pathologist also noted, Mr Tuhi's level of intoxication would have affected his stability and slowed his ability to react.

Was Officer A legally justified in using force?

57. While Mr Tuhi had committed minor assaults on both Mr Z and Officer A and there was a possibility of him doing so again, Officer A's actions in taking him to the ground were for the purposes of arresting him and overcoming Mr Tuhi's attempts to resist that arrest, rather than in self-defence.
58. Section 39 of the Crimes Act 1961 allows Police officers to 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.*"
59. To assess the justification of force used under section 39, the Authority must determine:
- whether the officer believed on reasonable grounds that the person was using force to resist arrest; and if so
 - whether the degree of force used to overcome that resistance was proportionate and reasonable in the circumstances as the officer reasonably believed them to be (that is, whether the officer could reasonably have overcome the resistance and effected the arrest by using less force or some other method short of force such as tactical communications).

Did Officer A believe on reasonable grounds that Mr Tuhi was using force to resist arrest?

60. The CCTV footage and the evidence of Officer A, Mr Z, Ms Y, Ms X and Mr W leave us in no doubt that Mr Tuhi was non-compliant and actively resisting Officer A's attempts to handcuff him. The resistance would have been plainly evident to Officer A.

Was Officer A's use of force proportionate and reasonable in the circumstances?

61. Police officers must constantly assess an incident based on information they know about the situation and the behaviour of the people involved. They must choose the most reasonable option, given all the circumstances known to them at the time.
62. Police 'Use of force' policy says officers "*should consider personal factors and situation and subject characteristics that may affect safety*". Policy goes on to say some of the factors officers should consider include:
- the person's response to the officer's communication;
 - their own, and the person's, age, sex, size, and physical ability (including any parity or disparity between themselves and the person);

- their training and skill level;
 - the influence of alcohol and/or other drugs/medication;
 - whether the person may be more vulnerable to any use of force;
 - the situational environment; and
 - the seriousness of their offence.
63. We are concerned Officer A says he was unaware of what the members of the public were doing at the time he decided to take Mr Tuhi to the ground. The CCTV footage shows they were actively interacting with Officer A and Mr Tuhi from the moment Officer A arrived on the scene. Mr W remained close to the two of them and had taken Mr Tuhi's arm before Officer A began lifting Mr Tuhi. Mr Z began walking towards them and was just over two metres away when Mr Tuhi was lifted.
64. Policy tells officers to exercise judgement regarding the degree of vulnerability posed to a person when considering whether to use force. The policy says people who may be more vulnerable to the use of force includes those who are under the influence of alcohol, those with hearing impairments, and elderly people.
65. In deciding how to restrain Mr Tuhi, the onus was on Officer A to ensure he thoroughly considered the circumstances. His risk assessment should have taken into account:
- Mr Tuhi's uses of force and resistance were of a low-level;
 - Mr Tuhi was an elderly man, grossly intoxicated and unsteady on his feet;
 - Mr Tuhi would have slow reaction times, given his level of intoxication; and
 - he was much younger and physically very capable compared to Mr Tuhi.
66. Officer A says he considered withdrawing, however, did not consider it appropriate. He says if he had let go of the left hand, with the handcuff fixed to Mr Tuhi's wrist, Mr Tuhi could have used the handcuff as a weapon of opportunity. He says this could have been *"potentially very dangerous if, you know, he swings it round and clobbers me or somebody else with it."*
67. Officer A knew he was the only officer present, and believed he needed to get the second handcuff on Mr Tuhi in order to control him. He did not feel like he was making any progress while they were standing up, so needed to do something differently. He believed it would be easier to get the second cuff on Mr Tuhi if he was on the ground.
68. When Officer A lifted Mr Tuhi off the ground by his thigh, it immediately caused both of Mr Tuhi's feet to leave the ground. He fell at such a steep angle that his feet were high above his head when his head hit the asphalt. Officer A was already holding one of Mr Tuhi's wrists, which means, as far as he was aware at the time, Mr Tuhi would only have one free hand with which to break his fall.

69. Recruits at the Royal New Zealand Police College are taught the principles of bringing an offender to the ground, and three empty-hand techniques they might use to do so. We note the empty hand training that takes place at both the college and later in Districts, occurs in a controlled environment. In one of the techniques, they are taught to restrain an offender's upper body and take them to the ground backwards. If there is a reason the officers are unable to take them down backwards, they can use a technique where they secure and push the offender's legs from behind, causing them to fall forwards. The offender should be able to break their fall with their hands. Officers do not *have* to use the three taught techniques.
70. Police told us the only empty-hand technique recruits are instructed *not* to use, is a carotid hold. We note that, of the three techniques taught, none involve lifting an offender off the ground and tipping them upright.
71. Recruits and officers do not usually have the opportunity to practise the taught techniques regularly, under guidance, to the point that they would use them instinctively and correctly when the need arises. The tactical options training that all Police officers receive annually only briefly touches on taking offenders to ground using empty hand techniques.
72. Officer A had been a Police officer for five years at the time of this incident. He thought he had been taught the leg-lift technique while training as a recruit at the Police College, though, could not be certain. It is plausible he inaccurately recalled the front-falling technique taught to him as a recruit.
73. The most common approved technique taught to recruits and regularly used by Police officers to take someone to the ground involves the use of a handcuff. It is known as the "*bottle-top*". When a handcuff is secured on a person's wrist, the handcuff can be twisted backwards or forwards which digs the handcuff into the underside of the arm and into the wrist bone. It can then be twisted, putting leverage onto the wrist, causing the person to flex, enabling them to be controlled down to the ground. Officer A did not consider using the "*bottle-top*" at the time of this incident. He says he has previously used the technique on intoxicated people but found it was ineffective on them.
74. Officers have discretion to use any technique they believe will work effectively in bringing an offender to the ground.
75. Officer A says he had successfully used the same (improvised) leg-lift technique prior to this incident. He says: "*I felt it was an effective and timely way of getting [Mr Tuhi] to the ground and I've never had injuries as a result of using it previously.*"
76. Officer A says: "*...the first time I tried to lift [Mr Tuhi's] leg I wasn't successful so I was quite mindful of not being excessive and then the next time I either readjusted or used a little bit more force...*". He says: "*the second time it was easier than I expected...*".
77. Officer A believes he used a small amount of force to overcome Mr Tuhi's resistance and says he was mindful he was only trying to restrain him. He does not think he could have overcome Mr Tuhi's resistance to being arrested in a less forceful way.

78. Officer A told us: *“I have struggled to come to terms with the unfortunate death of Mr Tuhi. It was never my intention to see Mr Tuhi come to any harm and that he did is a source of great regret to me.”*
79. We accept Officer A was solely focused on dealing with Mr Tuhi and genuinely did not realise Mr W was holding Mr Tuhi’s other arm at the time he decided to use the leg-lift.
80. Officer’s A assessment of the risks posed to Mr Tuhi in taking him to the ground using this technique, was poor. We appreciate this incident occurred in a very short space of time, however the threat posed by Mr Tuhi was minor (given that Officer A believed the assaults to be *“low level”*). As Officer A was about to use an uncontrolled manoeuvre on a vulnerable person, he was obliged to consider the situation and assess Mr Tuhi’s vulnerabilities and the risks more thoroughly. Police take offenders to the ground to effect an arrest regularly. It is crucial they conduct accurate assessments of the risks this poses.
81. The technique Officer A chose to use to take Mr Tuhi to ground, was dangerous and had disastrous consequences. The force used was disproportionate and unreasonable given the level of resistance and risk posed by Mr Tuhi.

FINDING ON ISSUE 2

Officer A was justified in taking Mr Tuhi to the ground to gain control of and restrain him; however, he used a dangerous technique to do so. The use of force was disproportionate and unreasonable given the level of resistance and risk posed by Mr Tuhi.

ISSUE 3: DID OFFICER A PROVIDE MR TUHI WITH APPROPRIATE MEDICAL CARE?

82. Officer A placed Mr Tuhi’s right hand in a handcuff as soon as he was on the ground. He then noticed a small amount of blood on the ground, though could not immediately see the cut to Mr Tuhi’s head. Officer A stood up and reached for his radio to request an ambulance within 12 seconds of Mr Tuhi banging his head on the ground.
83. The communications transcript shows he asked the dispatcher to *“get Ambo here priority”* for a head injury, telling them Mr Tuhi was breathing, but unconscious.
84. Officer A and Mr Z placed Mr Tuhi in the recovery position, about 40 seconds after he hit his head. Officer A removed his handcuffs, then he and Mr Z knelt by Mr Tuhi, observing him. Officer A says Mr Tuhi was *“sort of moving”* but not responding when he and Mr Z spoke to him. Footage shows Officer A placed his hand on Mr Tuhi’s shoulder, where it remained the entire time, until a few minutes after ambulance staff arrived. Officer A and Mr Z both checked and confirmed Mr Tuhi had a wrist pulse.
85. About three minutes after the ambulance was requested, two Police units arrived to assist. Officer A asked the dispatcher what time the ambulance was expected to arrive.

86. Officer A told the dispatcher they were only a few hundred metres from the ambulance station. One of the assisting officers went to the ambulance station to seek immediate assistance, however, there was no-one at the station.
87. Assisting officers retrieved a first aid kit from their patrol car, however, nothing appears to have been used from the kit. Officer A says the volume of blood was not enough that it would cause Mr Tuhi significant blood loss. He says he considered putting a bandage on the wound, but he did not believe it was necessary given the volume of blood. He also thought it would potentially be detrimental as paramedics would then have to remove it to make their assessment.
88. Officer A again asked the dispatcher when the ambulance was due to arrive.
89. The first ambulance officer arrived about ten minutes after being called. About three minutes after her arrival, Mr Tuhi's heart stopped. Two of the assisting officers helped do CPR on Mr Tuhi until more medical staff arrived.
90. We are satisfied Officer A responded quickly, once he realised Mr Tuhi was injured. He did everything possible to ensure he was given immediate medical care and stayed with Mr Tuhi to monitor and comfort him.

FINDING ON ISSUE 3

Officer A provided appropriate medical care to Mr Tuhi.

91. We acknowledge that Police College tactical options trainers do not have sufficient time allocated to equip recruits with many specific techniques in taking offenders to the ground during their 16 weeks of training. Given the prevalence with which officers take offenders to the ground in the course of arrest, we believe recruits should have more in-depth training in this area.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

13 April 2023

IPCA: 21-10192

Appendix –Policies

'USE OF FORCE' POLICY

92. 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.
93. 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. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
94. Police officers must 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).
95. 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 deescalating 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.
96. 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. 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.

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.



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz
