



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Non-fatal shooting in Southland justified

1. In Southland on 19 March 2022, a Police officer shot a man, Mr Z, who was confronting him with a knife.¹ Mr Z suffered an injury to his chest but survived.
2. Mr Z had recently been charged with assaulting his partner, Ms Y. Police were concerned about Ms Y's safety and, after searching a container she leased and not finding her, decided to visit Mr Z's home.
3. Mr Z aggressively told Police to leave and fired a bolt gun inside his house.² He then drove his car onto State Highway 1 heading south and stopped near Dacre Hall.
4. Police followed Mr Z, and an officer stopped and began talking to him. When another Police car arrived suddenly at speed and stopped near Mr Z's car, Mr Z ran off and tried to break into a milk tanker stopped on the road. He was still carrying the bolt gun. He then ran past several other cars, pursued by an officer (Officer A) who tried twice to shoot him with a sponge round weapon.³ This was unsuccessful. When Mr Z then swung a knife at Officer A, the officer shot Mr Z with his Glock pistol.

The Authority's Findings

Issue 1: Were Police acting lawfully when they entered Ms Y's container and Mr Z's home without a search warrant?

Police were lawfully justified in using a warrantless power to enter Ms Y's leased container and Mr Z's home.

Issue 2: Were Officer A's actions before the shooting reasonable?

¹ An outdoor folding knife, with 150mm handle and 100mm blade.

² This home-made bolt gun had the bolt and breech mechanisms of a cut-down .22 calibre rifle.

³ A XM1006 high density sponge round is fired from a 40-millimetre gas launcher with a range of about 30 metres. The weapon is designed to be non-lethal.

Officer A's decision to stop next to Mr Z's car was reasonable, based on the information he had at the time.

Issue 3: Was Officer A justified in using force against Mr Z?

Officer A was justified in attempting to fire the sponge round weapon at Mr Z.

Officer A was justified in shooting Mr Z with the pistol.

Issue 4: Did Police exercise good command and control?

Police exercised appropriate command and control.

There was a lack of radio coverage at Mr Z's rural home, but this did not negatively affect the communication between officers.

Analysis of the Issues

ISSUE 1: WERE POLICE ACTING LAWFULLY WHEN THEY ENTERED MS Y'S CONTAINER AND MR Z'S HOME WITHOUT A SEARCH WARRANT?

What happened?

Police notified of concern for Ms Y

5. Early on the morning of Saturday 19 March 2022, both Ms Y's daughter and Ms Y's friend received texts from what appeared to be Ms Y's cell phone.
6. Ms Y's daughter received texts:
 - *"Your mother is gone forever";* and
 - *"She's dead."*
7. Ms Y's friend received texts:
 - *"she's gone killed her";*
 - *"she's hanging in the container";* and
 - *"she's gone mate she gone no more she died."*
8. The last text was received at 8.36am. Neither the daughter nor friend could contact Ms Y. Ms Y's daughter sent a text to Mr Z asking him to explain, and he replied: *"Your guess is as good as mine I really have no idea."* The friend rang a worker at the storage company (where Ms Y was known to rent a container), and asked the worker to check a container for Ms Y.
9. At 9.05am, the worker rang 111 and informed Police that a woman may be locked in a container. The call lasted 18 minutes as the worker drove to a yard on Clyde Street, where she met Ms Y's

daughter and friend. Police arrived at this address at about 9.15am and were told that the container was at another storage yard on Liddel Street. Police arrived at Liddel Street and saw two cut locks on the ground in front of the container and “HELP” written in the dust on the side of the container.

10. Officer A, a sergeant, said Ms Y’s friend confirmed to him that it was Ms Y’s container. The Officer decided to enter the container under section 14 of the Search and Surveillance Act 2012,⁴ because of concerns for Ms Y’s immediate safety and welfare. Officer A used a grinder to cut the third lock off the container, but Ms Y was not in there.
11. At 9.37am, Police got the container owner's details and rang them. The owner had leased the container to Ms Y. Police also saw the text messages and returned to the Invercargill Police Station to plan the next steps. Officer A then requested Ms Y and Mr Z’s cell phone locations be checked.
12. At 9.52am officers identified Ms Y’s cell phone last ‘polled’ (connected for electronic communication) at 4.30am from central Invercargill, and at 10.11am Mr Z’s cell phone was ‘polling’ in the Dacre area, about 20 kilometres north of Invercargill.

Police plan their response

13. At about 10.30am, Officer A led a briefing at the Police station with a team of four officers. Police tell us that they considered the following:
 - a) Several texts appeared to have been sent from Ms Y’s cell phone, but by another person. These indicated Ms Y had been harmed. Police suspected Mr Z had sent these texts.
 - b) Mr Z has a history of violence and had allegedly used violence against Ms Y two days before, on 17 March 2022. A recent intelligence document about Mr Z also highlighted his use of weapons and propensity for violence.
 - c) Police had sufficient grounds to arrest Mr Z for his actions on 17 March 2022, when he breached bail and a Protection Order by visiting Ms Y, and when he failed to stop his car for Police.
 - d) Mr Z lived in a rented farmhouse in Dacre.
 - e) Mr Z’s cell phone was currently ‘polling’ in the Dacre area.
 - f) Ms Y’s cell phone had last ‘polled’ at 4.30am, within Invercargill city.
14. Officer A spoke on the phone to the commander of the local Armed Offenders Squad (AOS), Officer B. Officer B did not consider AOS deployment was necessary but put them on standby. It

⁴ See paragraph 87.

was agreed Officer A's team would go immediately to Mr Z's house, armed, and Officer A would carry a sponge round weapon. Officer A directed his officers to consider fire orders.⁵

15. Officer C (a constable trained as a Police negotiator), and Officer D were members of the team. Officer A also arranged for a Police dog handler, Officer E, to assist. Officer E arrived after the briefing, but had read the intelligence material relating to Mr Z.

Did Police have time to obtain a search warrant?

16. Section 14 of the Search and Surveillance Act 2012 allows Police to enter a place without a warrant if *"an offence is being committed, or is about to be committed, that would be likely to cause injury to any person"*, or *"there is risk to the life or safety of any person that requires an emergency response."*
17. Officer A tells us that his principal and immediate concern was for the wellbeing of Ms Y, so he decided to undertake a warrantless search of the container and Mr Z's home. It is uncertain whether Police considered obtaining a warrant.
18. It is possible for Police to get a search warrant from a Justice of the Peace (JP)⁶ in Invercargill on Saturday mornings. However, this often depends on JP and Police staff availability. We accept Police may not have had time to obtain a warrant.
19. We consider the use of a warrantless power was appropriate in these circumstances as the information Police had about an immediate risk to Ms Y's life or safety justified an emergency response.

FINDING ON ISSUE 1

Police were lawfully justified in using a warrantless power to enter Ms Y's leased container and Mr Z's home.

ISSUE 2: WERE OFFICER A'S ACTIONS BEFORE THE SHOOTING REASONABLE?

What happened?

Police arrive at Mr Z's home

20. Six officers travelled in four Police cars and were met by another officer not far from Mr Z's rented farmhouse. That officer was briefed on the phone and had read the intelligence material.
21. Officer A directed the officers to park at the bottom of Mr Z's driveway. Two cars were parked across the driveway to prevent other cars leaving or entering. The officers then positioned themselves around the outside of the house.

⁵ Fire orders are instructions which set out the circumstances under which Police may use firearms.

⁶ A person authorised to witness and sign statutory affidavits as well as certify documents.

22. Most officers' portable radios could receive transmissions but not transmit due to a lack of radio coverage in the rural area. Only Officer E and one other officer could transmit on their radios, by linking them with their car radio to boost the signal. The other officers relied on verbal communication and hand signals.
23. After about five minutes of calling and knocking on outside doors with no response, officers found a way to access a side door into an enclosed porch. From inside the porch, an officer knocked on the front door and called out but there was no response. As all the doors were locked, an officer rang the landlord at 11.04am. The landlord (who lived nearby) brought a container of keys to the house. While officers tried to find the correct key, Mr Z suddenly came to the door's windowpane and aggressively yelled at Police to leave. Officers withdrew to a safer position and tried to engage with him, but Mr Z repeatedly used abusive and aggressive language, saying he did not know where Ms Y was and to leave him alone.
24. Mr Z opened a side window and pointed what looked like a metal pipe at officers, again aggressively telling them to leave. Some officers were unsure what the pipe was, while others thought it was some type of firearm. As Police later discovered, Mr Z had a bolt gun.
25. The officers withdrew further to be behind cover and Officer A summoned the AOS by cell phone. The plan was to stay surrounding the house and wait for the AOS to arrive. Officers could hear, and sometimes see, Mr Z inside and, while they tried to communicate with him, Mr Z was not cooperating or wishing to engage.
26. Soon after, officers heard a 'pop' noise from inside the house, which further convinced officers that Mr Z had a firearm. Officer A says Mr Z was "*shooting [the bolt gun] like a firearm*".

Mr Z fled to State Highway 1

27. After about fifteen minutes, Mr Z walked through the porch to his car in the internal garage. He opened the automatic garage door and drove quickly onto the driveway. Officers saw and heard the car leaving, took cover, and communicated Mr Z's actions to each other.
28. Mr Z then drove his car at high speed into one of the Police cars parked across the driveway, smashing it aside. He drove straight across the road through wire fences and a paddock, then ended up on State Highway 1 driving south. The front of Mr Z's car was badly damaged, but he continued driving at high speed and overtook a car. That driver, Mr X, took a photo because Mr Z was driving so dangerously.
29. Just past Dacre Hall, Mr Z's damaged car stopped. Mr X first thought this was a road rage incident and stopped a short distance behind. A video from a tanker that drove past shows Mr Z standing in the road, holding the bolt gun and looking agitated. Two other cars stopped, and Mr Z approached one car, which drove off. Mr X called out to the occupants of the remaining car that Mr Z had a weapon.
30. About five minutes after Mr Z drove from his house, Officers C and E arrived in their Police cars, each stopping in the middle of the road, about 25 metres from Mr Z and his car. They asked Mr X to reverse his car to a safe distance, which he did.

31. Officer E got out of his Police vehicle and started talking to Mr Z, who was standing by his car holding the bolt gun and a knife. Officer E had a working radio but decided to turn it off to enable him to concentrate on negotiating with Mr Z. Officer C stayed close to the car's radio to provide updates. The AOS was approaching from the south but had not arrived yet.
32. While Officer E talked to Mr Z, a milk tanker arrived from the south and stopped about 30 metres away from Mr Z's car. Several more cars pulled over to stop behind the tanker. Officer E continued to talk to Mr Z.
33. Officer E tells us he was trying to de-escalate the situation and knew that reinforcements were on their way. At one stage Mr Z held the bolt gun under his chin and Officer C reported over the radio: *"male has a bolt gun, potentially 1X [Police code for suicide]"*. On hearing this, the AOS Commander, Officer B, said over the Police radio that the sponge round weapon should be used. Officer A, who was at this stage in his car travelling to the scene, replied on the radio, *"I've got some of that kit [meaning the sponge round weapon], I'm not too far away."*
34. Officer E, and to a lesser extent Officer C, had been talking to Mr Z for about five minutes when Mr Z began walking away from them towards the line of traffic to the south. Officer C reported this over the Police radio, saying Mr Z was *"about 20 metres from his vehicle, fair distance from it"*.

Was the way in which Officers A and D arrived at the scene reasonable in the circumstances?

35. Officer A, who was being driven by Officer D towards the scene from the north, heard that Mr Z had moved away and told Officer D to park next to Mr Z's car. He says his plan was to stop Mr Z from re-entering his car because he did not know if the car was still driveable and thought Mr Z may use it to ram other vehicles as he had done earlier.
36. Before Officers A and D could arrive, Mr Z wandered back towards his car, standing on the far side from Officers E and C. However, neither Officer C nor Officer E communicated that:
 - Mr Z had returned to his car; and
 - Officer E was having success in de-escalating the situation.
37. Officer A says he did not want to ask for updates because he knew the type of situation officers were dealing with: *"I trust staff will give you... that information when they're able to."* We consider it was reasonable for Officer A to rely on officers at the scene to provide relevant updates in this fast-moving situation.
38. Less than a minute after Mr Z returned to stand by his car, Officers A and D arrived at high speed with the Police car's emergency lights and siren on and braked sharply to stop by Mr Z's car.
39. Officer D says:

"I was going to keep driving until [Officer A] said stop and then he just yelled out, 'Stop right here' and so I just slammed on the brakes."

40. Officer A says:

“So, the instruction was [for Officer D to stop] between [Mr Z] and his car to restrict access to his car. Obviously, we’ve got there and had – [he] was no longer 20 metres away from his car, he was right back next to it so the plan there to contain that aspect of it was no longer an option.”

41. We think Officer A’s initial plan to prevent Mr Z returning to use his car was reasonable. However, the limited use of Police radios meant that Officer A was not aware of developments at the scene and did not realise the plan was no longer achievable.

42. Officer E says that before Officers A and D arrived, he was trying to de-escalate the situation. He felt he had a form of control over Mr Z, even though there were not yet any Police to the south to contain him. He was surprised by the sudden arrival of Officers A and D and saw Mr Z’s body posture change when he saw the Police car *“driving directly at [Mr Z] into the scene”*. Two members of the public in cars to the south also commented on the fast and loud arrival of the Police car.

43. Mr Z told us he was *“calming down”* before the car arrived, but:

“I thought [the Police car] was going to run me over. He stopped like five, six metres away from me. They come at a hell of a racket and stopped, a hell of a racket. ... I got a hell of a fright”.

44. As the Police car came to a stop, Mr Z ran south towards members of the public waiting in the milk tanker and cars. Officer A jumped out of the Police car and ran after him.

45. We believe the fast approach by Officer D, under the direction of Officer A, triggered Mr Z’s decision to run to the south and approach vehicles, interrupting Officer E’s ongoing de-escalation.

46. However, we find the approach was reasonable in the circumstances because:

- Officer A did not know it was no longer possible to block Mr Z from returning to his car and did not know that Officer E was having success de-escalating the situation.
- There was urgency in the radio transmissions and Officer A thought the sponge round weapon he had was needed as soon as possible.

47. Although the way in which Officers A and D arrived caused an escalation in the situation, it was reasonable in the context of the information Officer A had at the time. This was a fast-moving situation with radio traffic kept to a minimum.

FINDING ON ISSUE 2

Officer A’s decision to stop next to Mr Z’s car was reasonable, based on the information he had at the time.

Was Officer A's use of the sponge round weapon appropriate?

48. After Officers A and D arrived, Mr Z ran towards the line of traffic to the south. Officer A got out of the Police car and attempted to fire the sponge round weapon at Mr Z, believing Mr Z was approaching members of the public armed with a firearm and a knife. The weapon did not fire. Officer A then ran after Mr Z.
49. Officer A is trained in the use of the sponge round weapon. A Police armourer later checked the weapon and found it to be operational, so we consider it likely that operator error in a high-stress situation was the cause of the weapon not firing.
50. We accept this developed into a fast-paced and fluid situation. Mr Z was acting in an aggressive and unpredictable manner and Police knew he was armed. Police needed to protect the public. The AOS Commander had approved the use of the weapon that morning and again over the radio. We find that Officer A's use of the sponge round weapon was appropriate.

Was Officer A justified in shooting at Mr Z with a pistol?

What happened?

51. Members of the public who were out on the road, south of the incident, saw what was happening and quickly got back into their cars.
52. After Officer A's failed attempt at firing a sponge round at him, Mr Z ran towards the milk tanker at the front of the line of cars to the south. Mr Z tried to get into the milk tanker's cab, but the door was locked.
53. The milk tanker driver, Mr W, tells us that when Mr Z could not open the door, Mr Z smashed the window. Mr Z used the bolt gun to do this, and it fell apart. Mr W had with him a small piece of metal which he uses as a lever to open milk vats. He told us: *"I just whacked [Mr Z] right across the top of the head as hard as I could, called him a couple of names ... and he just took off down the back of the truck."* Officer A saw this happening and continued running after Mr Z, gaining on him.
54. In the fourth car behind the milk tanker, Mr S saw Mr Z running towards them and turned on his car's dashcam. This recorded what happened, and we have viewed that footage.
55. Mr Z ran past the milk tanker and across the front of the next car, driven by Mr V. Mr V saw him coming and, after locking the doors, drove his car forward to discourage Mr Z from getting too close. Mr Z stepped back, then ran past Mr V's car and past another car in the line. He approached a car driven by Mr U. Mr U tried to lock his doors as he feared Mr Z would get in. Mr Z tried to open Mr U's front passenger door, dropping the second part of the bolt gun as he did so. Mr Z was still holding the knife.

56. Officer C gave an update on the radio and drove forward. Officer E initially thought of getting his Police dog out, but instead jumped in his car and also drove forward. Officer D had got out of the Police car and was running after Officer A, but quickly realised she could not keep up, so ran back to the car to drive it forward. Officer A was the only officer following Mr Z on foot.
57. Officer A caught up to Mr Z, presented the sponge round weapon and challenged him to stop. Mr Z turned on Officer A and rushed towards him, swinging the knife in his right hand. The pair were about one or two metres apart. Officer A tried to fire the sponge round weapon for the second time, but it again did not fire. Mr Z moved forward rapidly, and Officer A quickly stepped back.
58. By this time Officer C had driven forward, followed quickly by Officer E in his dog van. Both saw the confrontation between Mr Z and Officer A.
59. Mr Z continued to rush towards Officer A, swinging the knife close to him. Officer A retreated and drew his pistol. Mr Z was close enough to reach out his left hand and was about to grab the pistol. Mr Z's recollection is that he did grab the pistol.
60. Officer A fired once. The bullet struck Mr Z in the chest area, and he fell to the road. He later had surgery for the injury and recovered.

What was the legal justification for Officer A to use the pistol?

61. Officer A relies on section 48 of the Crimes Act 1961 to justify his shooting of Mr Z. Section 48 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
62. Under section 48, we must assess Officer A's actions on both:
 - a subjective basis (that is, what Officer A genuinely believed); and
 - an objective basis (what a "reasonable" person would have done).
63. This assessment involves three questions:
 - a) What were the circumstances as Officer A believed them to be? (a subjective test).
 - b) Did Officer A shoot Mr X to defend himself or another? (a subjective test).
 - c) Was shooting Mr X reasonable in the circumstances as Officer A believed them to be? (an objective test).

What was Officer A's understanding of the circumstances?

64. Officer A told us:
 - Mr Z had been armed with a bolt gun;
 - Mr Z was armed with a knife;

- Mr Z was aggressive and “*highly agitated*”;
- Mr Z had attempted to break into the milk tanker, smashing the window;
- Mr Z had attempted to get into Mr U’s car;
- the AOS had not arrived yet;
- just before Officer A fired, Mr Z was swinging a knife at him; and
- just before Officer A fired, Mr Z was so close he could almost grab Officer A’s pistol.

65. Officer A clearly perceived imminent danger to himself, with possible serious consequences for his safety.

Was Officer A acting in defence of himself or others?

66. Officer A says:

- “[Mr Z] was a threat, he was aggressive, highly agitated”;
- He believed Mr Z was going to attack him with the knife and could kill or seriously injure him;
- “[Mr Z] actually had that knife in his hand and he’s, he’s swung and slashed, slashed out at me”;
- “[A]t that stage he would have been 1-2 metres sort of away from me, coming at me um so I fired that one [bullet] which I believe was justified under Section 48 of the Crimes Act um to defend myself”; and
- “[I]f he managed to injure me or get away and he’d get access to a vehicle again, um so anyone else, those public there were still exposed.”

67. We accept that Officer A was acting in self-defence when he shot Mr Z. He was also acting to defend the occupants of the stopped vehicles from possible attack by Mr Z.

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

68. Officer A says he considered other tactical options, including:

- responding with ‘empty hands’ (no weapon): there is “*no clear way to disarm someone with a knife... if you do you’re likely to get cut or stabbed and there’s a risk of GBH [grievous bodily harm] or death to yourself*”;
- pepper spray: “*it’s not always effective ... and [Mr Z] still had the ability to ... sling, stab with, with a knife*”;
- baton: “*it’s not a quick draw to, to get your baton out. ... they’re not really effective or recommended against an offender with a knife*”;

- Taser: *“it’s not a quick option to ... get it out and get it up and going”* and it is *“not very effective at... someone who’s rushing towards you”*;
 - the sponge round weapon: he tried this twice unsuccessfully; and
 - *“to run, flee or disengage ... weren’t an option or else he’d be back into a [car]”*.
69. Officer A had decided to arm himself with a pistol when he took his Police team to Mr Z’s house. Other members of the team were also armed due to risks they perceived Mr Z presented.
70. When Officer A arrived at the scene on State Highway 1, he saw Mr Z was running away and approaching cars occupied by the public. Officer A knew that Mr Z:
- was acting in an extremely unpredictable and aggressive manner;
 - had driven his car dangerously to avoid arrest, including ramming a Police car;
 - was armed with a bolt gun, which he had fired in the house and pointed at Police;
 - was armed with a knife; and
 - had been called on by multiple officers to surrender and that he was under arrest but had failed to comply.
71. When Mr Z failed to get into the milk tanker, and ran to the cars parked behind it, Officer A thought:
- Mr Z was trying to enter a car with the probable aim of stealing it and getting away;
 - for that to happen, members of the public would be exposed to the threat of grievous bodily harm or death; and
 - if Mr Z got away he would pose an ongoing threat of grievous bodily harm or death.
72. The incident had reached a critical point. Verbal instructions and communication, and the attempted use of the sponge round weapon, had failed to stop Mr Z. Mr Z moved towards Officer A with the knife raised and slashed it back and forward. Officer A says he backed away from Mr Z and feared Mr Z would kill him. Other officers were not able to immediately assist. As far as Officer A was aware, he was the only armed officer close enough to stop Mr Z.
73. Footage taken by Mr S’s dashcam, as well as eyewitness accounts, support Officer A’s recall of the moments before and when the shooting occurred. Mr Z rushed towards Officer A with the knife raised and sweeping to strike.
74. We accept that it was reasonable for Officer A to fire his pistol at Mr Z, based on Officer A’s perception of the circumstances, the probable imminent risk, and serious consequences for his safety and the safety of others.

FINDINGS ON ISSUE 3

Officer A was justified in attempting to use the sponge round weapon against Mr Z.

Officer A was justified in shooting Mr Z with the pistol.

ISSUE 4: DID POLICE EXERCISE GOOD COMMAND AND CONTROL?

75. The planned approach to Mr Z's rural farmhouse was well organised and resourced, apart from considering communications in a remote location and not connecting portable radios to a link-line (to boost the signal). Only Officer E and one other officer could transmit on their radios at the house. Without portable radio communication, officers made use of verbal and line-of-sight commands, which was not ideal but did not negatively affect the outcome at the house.
76. We identified lack of radio coverage in rural areas as a problem in the 'Policing in small communities' review published in November 2021. The Authority recommended: *"Police should find a technological solution as soon as possible to enable officers (and particularly sole officers) to contact their Communications Centre from a black spot in the event of an emergency."* Police are working to address this recommendation and we will monitor progress.
77. After Mr Z drove from the house, Officer A:
- checked on the officers' wellbeing;
 - arranged for Officers C and E to follow Mr Z in their cars;
 - arranged for the house to be checked for Ms Y (officers did not find her); and then
 - left the house by car with Officer D driving to follow Mr Z.
78. Despite the problems with radio coverage, Officer A effectively coordinated Police actions at the house, including his decision to stay behind and prioritise searching for Ms Y before pursuing Mr Z.
79. Mr Z's decision to smash his car through a Police car parked on the driveway was extreme and somewhat unpredictable (officers had deliberately parked across the drive to stop access). Mr Z acknowledges to us that he did not know why he drove through the Police car as he was aware of easier routes away from the house.
80. The incident then developed rapidly (about five minutes from Mr Z driving to State Highway 1, then another nine minutes until he was shot). Planning was underway to cordon and contain Mr Z once the AOS arrived.
81. Officer E is an experienced officer and started communicating with Mr Z because he felt he had the capability for this. To help him concentrate, Officer E turned off his portable radio, and Officer C communicated this to other staff using his car radio. We find Officer E's, and then Officer C's, communication with Mr Z was initially successful at keeping Mr Z by his car.

82. Police policy on command and control of incidents provides that the shift commander of the Emergency Communications Centre (in this case, the Southern Communications Centre - SouthComms), is responsible for the initial incident control, until control is formally passed to a suitable officer in the field. This officer is the 'incident controller' and takes control once they have been fully briefed about the incident and have formed a response plan.
83. While SouthComms was in command and control of the State Highway 1 incident, it happened quickly and there was little SouthComms could do other than direct officers to the scene to contain Mr Z. For the most part, the officers on the ground had to think on their feet and make their own tactical decisions as events unfolded.
84. The officers took command at the scene to the extent that circumstances allowed.
85. The senior officer from the AOS then took command of the incident for a short period of time after the shooting until an investigation supervisor was appointed as incident controller.
86. Mr Z was subsequently charged with offences relating to this incident and previous events. After about 11 months, which delayed the release of this report, Mr Z pleaded guilty to all charges and was convicted and sentenced.

FINDINGS ON ISSUE 4

Police exercised appropriate command and control.

There was a lack of radio coverage at Mr Z's rural home, but this did not negatively affect the communication between officers.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

25 May 2023

IPCA: 22-12542

Appendix – Laws and Policies

SEARCH AND SURVEILLANCE ACT 2012

Power to enter without a warrant

87. Section 14 of the Search and Surveillance Act 2012 says:

Warrantless entry to prevent offence or respond to risk to life or safety

“(1) A constable who has reasonable grounds to suspect that any 1 or more of the circumstances in subsection (2) exist in relation to a place or vehicle may:

(a) enter the place or vehicle without a warrant; and

(b) take any action that he or she has reasonable grounds to believe is necessary to prevent the offending from being committed or continuing, or to avert the emergency.

(2) The circumstances are as follows:

(a) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property:

(b) there is risk to the life or safety of any person that requires an emergency response.”

CRIMES ACT 1961

Law on the use of force

88. Section 48 of the Crimes Act 1961 says:

“Self-defence and defence of another

(1) Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”

‘USE OF FORCE’ POLICY

89. 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.

90. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, and ensure 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.

91. 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:
- 1) the incident type, location, and time;
 - 1) the officer and subject's abilities;
 - 2) the subject's emotional state;
 - 3) the influence of drugs and alcohol and the presence or proximity of weapons;
 - 4) similar previous experiences with the subject; and
 - 5) environmental conditions.
92. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
93. A key part of an officer's decision about 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:
- 1) cooperative;
 - 2) passively resisting (refuses verbally or with physical inactivity);
 - 3) actively resisting (pulls, pushes or runs away);
 - 4) assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action);
 - 5) or presenting a threat of grievous bodily harm or death to any person.
94. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
95. 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.

'USE OF FIREARMS' POLICY

96. The Crimes Act provisions are mirrored in Police General Instruction F061 (Fire Orders) in the 'Police Firearms' chapter of the Police Manual. F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act, and also sets out the circumstances in which the use of lethal force is justified.
97. General Instruction F061 provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm, and if they cannot reasonably protect themselves or in a less violent manner. An offender is not to be shot until all the following conditions have been satisfied:
- *"they have first been asked to surrender (unless it is impractical and unsafe to ask them)";*

- *“it is clear that they cannot be disarmed or arrested without first being shot”;* and
- *“further delay in apprehending the offender would be dangerous or impractical.*

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 Kenneth Johnston KC.

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
